THE JOURNAL OF LIBERTARIAN STUDIES

AN INTERDISCIPLINARY QUARTERLY REVIEW

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Economics, Politics, and
the Coming Collapse of the Elderly Welfare State

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ECONOMICS, POLITICS, AND THE COMING COLLAPSE OF THE ELDERLY WELFARE STATE

James Rolph Edwards*

Americans live in what is largely a free society, relying primarily on market price and profit-and-loss signals to motivate people to use scarce resources efficiently. Because market transactions are mutually voluntary exchanges, they are also mutually beneficial, since, by definition, each party wants what he or she is trading *for* more than what they are trading *to* the other party, and is made better off by the exchange in their own opinion. Economists term this a "positive sum game," and it includes productive exchanges, such as employment relationships. There are minor qualifications to the claim that such transactions are intrinsically positive sum, such as when production exchanges result in air or water pollution that hurts third parties, or when the nature and quality of goods or services are misrepresented by one of the parties. One of the great justifications for the free society is the basic observation that, in the absence of such problems, mutually voluntary exchange is mutually beneficial.

This can be seen clearly by noting that forced exchanges do not have the same effect as voluntary transactions. If income is transferred at the point of a gun from citizen A to citizen B, so that B gains and A loses, we have no way whatsoever of knowing that the world is a happier place. We simply cannot compare people's internal values and feelings.[1] Preventing such forced exchanges and other fraudulent, harmfully negligent, or dishonest acts by private parties (or foreign

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[1]We owe this point to the classic work of Lionel Robbins, *An Essay on the Nature and Significance of Economic Science* (New York: Macmillan, 1932).

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governments) is one of the main reasons government is necessary, and was constitutionally established in this country. Unfortunately, people desiring to obtain such transfers, or to gain and maintain power by catering to those who desire transfers, have come to dominate governmental policy in our day, so that government itself has become the primary agent of compulsory income transfers. In an earlier period of greater personal and public honesty, such compulsory transfers would have rightly been termed thefts.

Coerced governmental income transfers may even be more costly and less justifiable than private theft. Private thieves often redistribute income dollar for dollar, without costly intermediation. The government can never take a particular sum of money from one citizen or group of citizens, and give that same amount to another citizen or group of citizens, for the very simple reason that a large fraction of the money taken must go to pay the salaries of the bureaucracy administering the transfers, and to pay for the buildings, power and equipment they use, and other overhead costs.[2] This payment, known as the "resource cost" of the bureaucracy, essentially measures the value of private sector production *lost* as those people and other resources are drawn from private employments into the public sector and used instead simply to redistribute a portion of the remaining aggregate output and income.

Additional real output and income is lost because the taxation to finance such transfers imposes costs on taxpayers above the revenue yielded. This includes, among other things, reducing their incentive at the margin to work, save, and invest, so that, for this reason also, fewer goods and services are produced than would be if tax rates were lower.[3] Recipients of the subsidies also tend to reduce their employment and earned income, thus trading part of the additional income they have received for increased leisure time, so that they have more of both.[4]

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[2]In some cases, this resource cost is known to absorb as much as 75 percent of each dollar budgeted to a redistributive agency. See Robert L. Woodson, *Breaking the Poverty Cycle: Private Sector Alternatives to the Welfare State* (Harrisburg, Penn.: Commonwealth Foundation, 1989), p. 63.

[3]One political scientist, summarizing many economic studies, estimated the additional costs of taxation born by the public to be 65 percent of net tax revenue. See James L. Payne, "Unhappy Returns," *Policy Review* (Winter 1992), pp. 18–24.

[4]When the War on Poverty began in the late 1960s, labor force participation rates of the most affected groups fell significantly. See Charles Murray,

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This also reduces real production and income, both gross and per capita, *ceteris paribus.* For these and other reasons, compulsory income redistribution is a *negative* sum game from which some people gain and others lose, but in which the sum of the losses exceeds the sum of the gains.[5]

ORIGINS AND NATURE OF SOCIAL SECURITY

In the light of this background, consider the central element of the elderly welfare state: social security. It is crucial to note that this system became law only under the emergency conditions of the Great Depression. At least since the turn of the century, the institutionalization of such a program had been debated. It is understandable that there was increasing concern with care of the elderly at that time, since there were coming to be so many more of them than before. The free market was rapidly raising the living standards and health of ordinary persons, thus raising life expectancy enormously.

On the other hand, the same rising per capita incomes and living standards were making it easier than ever before for people to provide for their own retirement during their working lives. Studies in the 1920s demonstrated that there was very little meaningful problem of elderly poverty and privation to be solved by a compulsory retirement program.[6] With very few exceptions, the elderly simply kept working, retired on private savings or pensions (which were rapidly increasing in number and value), or were taken care of by family. Private charity was available for the two or three percent of the aged who fell through the cracks. Things were improving steadily, and the public at that time strongly opposed governmental creation of a compulsory social security system.

Losing Ground: American Social Policy, 1950–1980 (New York: Basic Books, 1984), in the appendix. Controlled studies such as the New Jersey-Pennsylvania and Seattle-Denver income maintenance experiments also found large labor force withdrawal. See, for example, John F. Cogan, *Negative Income Taxation and Labor Supply: New Evidence from the New Jersey-Pennsylvania Experiment* (Santa Monica, Calif.: Rand Corporation, 1978).

[5]For brevity, I have here omitted discussion of another major cost of redistributive politics, known as the rent-seeking cost. See Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," *Western Economic Journal* 5 (June 1967), pp. 224–32.

[6]Carolyn Weaver, "Support of the Elderly Before the Depression," *Cato Journal* 7 no. 2 (Fall 1987), pp. 503–25.

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Then came the Great Depression, with massive unemployment and distress that lasted over a decade.[7] In these desperate circumstances, the public accepted legal institutionalization of compulsory social security as a result of two brilliant, fraudulent appeals by its advocates, both in and out of the Roosevelt Administration. The first was that employers would be forced to pay half of the tax for workers. Since it was as true then as now that employees vastly outnumbered employers among voters, this promise of compulsory redistribution between employers and employees enormously increased public support for such a system. However, it was not true. Employee compensation is not economically arbitrary. Upper limits are set by the market value of worker's marginal contributions to the output of the firm. The employer tax simply reduced labor demand over time until wage rates were enough lower than they otherwise would have been to offset the compulsory employer contributions. But appearances are deceiving, and employees still do not realize they are bearing the entire cost.

Notice, by the way, that it does not greatly matter for the ethical character of this brilliant and successful political strategy, whether the proponents of social security themselves understood the economics of tax incidence enough to realize that virtually the entire employer burden would be shifted to employees over time. The appeal Roosevelt and his supporters made was to base human motives: to the desire to obtain something for nothing, and to class envy and resentment of employers by workers, resentment that the progressive left had long cultivated.[8] If, however, the initial proponents of compulsory social security really did understand the economic incidence of this type of tax (in contrast to it's legal incidence), workers not only were appealed

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[7]For a brief explanation of the depth and length of the Depression, see James Rolph Edwards, "American Liberty in Decline, 1865–2000: The Progressive Substitution of State Coercion for Individual Cooperation," *The Montana Professor* 11, no. 1 (Winter 2001), pp. 20–21. For an excellent book-length treatment, see Robert E. Hall and J. David Ferguson, *The Great Depression: An International Disaster of Perverse Economic Policies* (Ann Arbor: University of Michigan Press, 1998). See also Richard K. Vedder and Lowell Gallaway, *Out of Work* (New York: Holmes & Meier, 1993), chaps. 5–7.

[8]Primarily this was done by propagating, through every imaginable forum, including the government K–12 education system that nearly everyone's children must attend, the false claim that employers in free markets systematically exploit employees through underpayment. For contrary historical and empirical evidence, see James Rolph Edwards, "Deflating the Union Mythology," *The Margin* (Fall 1992), pp. 58–59.

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to on their baser instincts for support of the program, but were successfully lied to in the process.

The second fraudulent claim was that, aside from being universal and compulsory, social security would otherwise act like a private pension or insurance plan.[9] Thus, advocates speak of social security "contributions," "retirement payments," and a "trust fund." Yet, in no essential characteristic is social security like private pensions. In a private pension plan, not only is participation voluntary, but the contributions are invested in financial asset markets where they add to the supply of financial capital available to business for investments in physical assets or research and development, which increase productivity over time and literally generate the future income and output for future retirement payments and consumption.

Americans have been propagandized to believe that social security payments they receive after retirement constitute interest and principal on their earlier compulsory tax contributions to the system, and to this day most of them actually believe that. Yet despite an initial promise that the system would be fully funded, and endless talk since about a social security "trust fund," the government amended the law in 1939 and began making payments to current retirees from the tax payments of contemporaneous workers, *not* from principal and interest on the retiree's own earlier social security tax payments. Social security is a compulsory, intergenerational income transfer in which successive generations participate on both ends of the income redistribution in sequence. It is *not* a retirement fund or insurance contract in which a contributor has a property right to promised benefits. This was admitted by the U.S. Supreme court in *Helvering v. Davis* (301 U.S. 619, 1937) and *Flemming v. Nestor* (363 U.S. 603, 1960). Like all compulsory income transfers, it makes some people better off in the present only by making others worse off in the present, and is a negative sum game that makes us worse off in the aggregate, over our whole lifetimes, than we would otherwise be.[10]

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[9]The Committee on Economic Security, created by President Roosevelt in 1934 to develop a proposal for a social security bill, deliberately advocated structuring social security on the appearance of a private insurance company model, in an effort to gain the maximum possible support from a public most of the members of which had no desire to receive subsidies from taxes on other working citizens.

[10]One of the achievements claimed for social security about which its advocates are most proud is that it reduced the poverty rate among the elderly. See

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As social security tax payments are made, all that currently accumulates in the trust fund is government bonds, consisting of promises to pay principal plus interest from future taxation. As the tax revenues obtained from current workers are received, the money is immediately paid out to current retirees.[11] If there is a current surplus of social security tax revenues over current payments to retirees (as there has been recently), government bonds equal in value to that surplus are added to the fund, and that extra revenue is used for *other* current government expenditures. Compare this government paper shuffling with a typical act of corporate borrowing, in which a bond is sold to a voluntary purchaser, and the funds are used to increase the productive physical assets of the firm, creating jobs and generating future production of real goods and services for sale to voluntary purchasers, and hence revenue from which to pay principal and interest on the bond. If the firm always used the funds instead to pay off past lenders, and never for investment in productive assets, we would immediately see the inherent fraudulence and bankruptcy of the process.

There are three reasons why the social security system seemed to work well in the beginning. First, both tax and benefit levels were relatively low. Second, life spans were lower than they are now. In 1935, when the system originated, mean life expectancy, though much higher than in earlier times, was only 61.7 years, which was actually *less* than the retirement age of 65 specified by the social security act. Third, the old were still a relatively small fraction of the population, so there were many workers paying into the system for each retiree drawing payments. Nevertheless, the system began reducing labor

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Federal Reserve Bank of San Francisco, *Economic Newsletter* (June 25, 1999). There are two problems with this claim. First, it could only do so by making younger workers *poorer,* a fact those advocates carefully never mention. Second, with real per capita incomes rising over time, the elderly poverty rate would have declined *without* social security, and might well have done so at a more rapid rate, given that the expansion of the regulatory welfare state (including social security) demonstrably reduced the growth of productivity in the U.S. after 1971. See Richard K. Vedder, "Federal Regulation's Impact on the Productivity Slowdown: A Trillion Dollar Drag," Center for the Study of American Business, *Policy Study Number 131* (July 1996).

[11]Interest is paid on bonds in the fund by adding new bonds of a value equal to accrued interest. And, of course, maturing bonds must be retired. Actually, old bonds in the trust fund are simply rolled over into new bonds of equivalent value as social security tax revenue is received and then paid out to current retirees.

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force participation immediately by motivating people to retire earlier than they otherwise would have.[12] This withdrawal of labor from employment, though small at first, reduced aggregate output and both gross and per capita income over time, relative to what they would have been. People who are not working—as a result of distorted incentives—are not producing.

It may be that the worst effect of this compulsory intergenerational income transfer is the least known. People's primary motive for saving is to provide for their retirement. Because Social Security provides "defined" benefits (independent of contributions), *social security taxes and benefits have reduced the national saving rate,* thereby lowering the national rates of capital formation, productivity, and real income growth over time, *ceteris paribus*.[13] In stark contrast to the effect of private pensions, this tends to *reduce* the nation's capacity to provide for the retirement payments and consumption of the elderly. Simultaneously, the burden of retirement payments keeps rising. As birth rates keep falling and life spans rise, both the average age and the retired fraction of the population naturally increase while the working fraction tends to fall. Add to this the increasing temptation for politicians in successive elections to buy the votes of the elderly and near elderly by raising real benefit payments, and an eventual default of the system—partial or total—becomes essentially inevitable.

Social Security is an immense "Ponzi" Scheme or compulsory pyramid. The defining characteristic of a pyramid scheme, as Brink Lindsey recently pointed out, is that investor's money is never put to

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[12]Jonathan Gruber and David Wise, "Social Security and Retirement: an International Comparison," *American Economic Review Papers and Proceedings* 88, no. 2 (May 1998), pp. 158–67. Gruber and Wise summarize 11 papers written by an international team of economists studying the negative effects of compulsory, pay-as-you-go retirement systems on labor force participation in America, Canada, and the European welfare states.

[13]See Martin Feldstein, "Social Security and Saving: New Time Series Evidence," *National Tax Journal* (June 1996), pp. 151–64. See also Isaac Ehrlich and Jian-Guo Zhong, "Social Security and the Real Economy: An Inquiry into Some Neglected Issues," *American Economic Review Papers and Proceedings* 88, no. 2 (May 1998), pp. 151–57. The non-partisan Congressional Budget Office agrees that social security reduces the saving rate. See Congressional Budget Office, *Social Security and Private Saving: A Review of the Empirical Evidence* (Washington, D.C.: U.S. Government Printing Office, 1998), p. 30.

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any productive use. Instead, it is diverted to pay off earlier investors. Though nowadays, defenders of compulsory social security bitterly deny that it is a Ponzi scheme, for some time, prominent advocates of the system were proud of this fact. Consider this 1967 statement by the Keynesian economist Paul Samuelson, one of the greatest advocates of the Welfare State:

> The Beauty of social insurance is that it is actuarially unsound. Everyone who reaches retirement age is given benefit privileges that far exceed anything he has paid in. . . . How is this possible? It stems from the fact that the national product is growing at compound interest. . . . Always there are more youths than old folks in a growing population. . . . A growing nation is the greatest Ponzi game ever contrived.[14]

How can it have failed to occur to such an eminent economist that all pyramid schemes eventually collapse, and that this one contained the seeds of its own doom? Yes, there are always more youths than old folks in a *growing* population, but population growth had been slowing and the population was aging long before Samuelson wrote this. Did he not grasp that the provision of compulsory Social Security, by diminishing the personal perceived need for children, adds to the effect that rising per capita real income has of reducing birth rates, thus progressively reducing the working fraction of the population while the retired fraction is rising?[15] Such is the blindness induced by statist ideology.

THE COMING DEFAULT

By now, the proximate factors that will bring the social security system to crisis are well known. For one, mean life expectancy has risen dramatically and retirement ages have fallen, so that people are

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[14]As quoted in Brink Lindsey, "Social Insecurity," *Reason* 33 no. 10 (March 2002), p. 46.

[15]In an underdeveloped nation, birth rates must be high precisely because infant mortality rates are high, and having progeny is the primary mechanism of retirement insurance for an adult. As markets and industry develop and real incomes rise, however, the necessity for this mechanism is reduced, and birth rates fall, eventually reducing population growth. *All* developed nations have experienced this. In fact, birth rates have actually fallen *below* the replacement level in many European and other developed nations. Compulsory, defined benefit social security systems have clearly augmented this effect.

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spending less time paying into the system and more time collecting from it. More important, while the post-World War II baby boom provided lots of workers to finance the system, it was followed by much lower birth rates and population growth. In 1950, there were 17 workers per retiree. It is now three to one, and the boomers begin retiring around 2008. By 2030, if not before, there will only be two workers per retiree, and they will not be willing to be taxed for social security at the enormous rates necessary to provide the boomers—my generation—with real benefit levels anything like those being enjoyed by the current generation of retirees. As early as 2015, the system will begin paying out more than it takes in, forcing it to sell bonds from the trust fund for money to cover the difference, and in a decade or two after that, the trust fund itself will be empty.[16]

A few extreme defenders of the system dispute this. Some have expressed belief that large increases in female labor force participation will provide many additional workers to feed revenue to baby boom retirees. Indeed, it is true that the number of workers per retiree has actually risen slightly since 1975, when it was only 2.7, reaching 3.0 in 1999, and entry of females into the labor force was the big factor. Black female labor force participation is still increasing rapidly, but blacks are a relatively small fraction of the population. White female labor force participation is still rising, but only slightly, and has been slowing toward a stop. Worse, both black and white *male* labor force participation rates have been *declining* for decades. As it nets out, *the overall labor force participation rate grew very little in the nineties, and not at all in the last three years of that decade.*[17] It is likely at or near its peak. When the boomers retire, and probably before, labor force participation and the number of workers per retiree will start declining rapidly. There is little hope in any of this for demographic salvation of social security.[18]

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[16]Because the surplus of current social security tax revenues over current expenditures is being used to provide for other current government expenditures, problems will begin immediately when that surplus disappears, if not before. The government will either have to reduce those expenditures, raise taxes, or borrow money to continue them. In the latter case, a danger is that government may monetize much of the debt and generate inflation.

[17]See Council of Economic Advisers, *Economic Report of the President* (Washington, D.C.: U.S. Government Printing Office, 2001), table B-40, p. 322.

[18]The Federal Reserve Bank of Cleveland reported a few years back that Medicare, another prominent pillar of the elderly welfare state, is facing a worse

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Notice that the coming default would have been precluded if the social security system had been fully funded, that is, had allowed people's payments to be privately invested like a private retirement plan. No matter how large the baby boom cohort was, their payments would have generated the real output and income for their retirement. But this was not done, and some default is now almost inevitable if we do not soon move strongly in that direction. The political economy motives behind unfunded systems is fairly clear. When Otto von Bismarck enacted the first compulsory social security system in the 1880s in Germany, he could have simply required people to save, and let private investment firms manage the money. But that would not have done his *government* any good. It was far better, as Bismarck himself made clear, to have them receiving checks from, and being dependent on, the government, to cement their loyalty to the state.[19] The same ideologically statist reasoning, conscious or subconscious, motivated the administration of Franklin Roosevelt half a century later, and continues to motivate the defenders of government social security to this day.[20]

If the current political deadlock prevents reform of social security in the next few years, we will soon learn the folly of the belief that the power to tax makes default impossible, so that government can operate a fraudulent retirement system with impunity. At that point in time, my generation will come face to face with the terrible truth. When they realize they have paid all their working lives into the system and are able to obtain only little or nothing from it, all delusions will fall away, and they will be unable to deny that they have been massively stolen from. This may precipitate the worst political crisis since the Civil War.

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crisis than social security is facing, with expenditures at that time already exceeding current income, so that the medicare trust fund was already declining, and projected to be exhausted very early in the 21st century. See Cleveland Federal Reserve Bank, "Medicare Insolvency," *Economic Trends* (May 1997).

[19]Lindsey, "Social Insecurity," p. 45.

[20]Do not interpret my discussion here as indicating that I favor governmentally coerced private saving and investment, in the sense that such a social policy would be my first option. My first option is personal freedom, and personal responsibility for the consequences of one's choices, including provision for old age, with family responsibility and voluntary charity for victims of unforeseeable adverse circumstances.

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CRISIS AND OPPORTUNITY

Fortunately, we are not the first nation to face this crisis, and we can take instruction from those who have gone before. More than 40 different nations, including Great Britain, Chile, Italy, and Singapore have already privatized their social security systems to varying degrees. Chile began the trend, privatizing almost totally, and, consequently, has had the most spectacular success. Chile's system was very similar to ours, but it reached its crisis sooner, as demographic changes caused the system's outlays to exceed its revenues. In 1981, the Chilean government began allowing private companies to compete to manage the retirement savings of dependent workers, and allowing those workers to decide within wide limits how much to contribute. Also, a minimum pension guarantee was included to reduce risk from bad investments.[21] Chilean workers had the option of staying in the old system, but 90 percent chose not to do so.

It is true that this was done in the context of other, similar reforms. The Chileans scrapped trade barriers, privatized government-owned enterprises, and reduced the entire government sector by more than 50 percent. In combination with private management and investment of retirement funds, this increased their saving rate to 25 percent, and raised real economic growth to seven percent per year. As a result, pensions under the new system have been enormously higher in real terms—between 51 and 57 percent higher—than they were under the old system.[22] This was accomplished with *lower* retirement tax rates.

President Bush rather timidly wants to allow only a small fraction of worker's social security taxes—perhaps two percentage points—

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[21]See Sebastian Edwards, "The Chilean Pension Reform: A Pioneering Program," in *Privatizing Social Security*, ed. Martin Feldstein (Chicago: University of Chicago Press, 1998), pp. 33–62, for a comprehensive discussion of the Chilean reform. See also Peter Diamond and Salvador Valdez-Prieto, "Social Security Reforms," in *The Chilean Economy: Policy Lessons and Challenges*, ed. Barry Bosworth, Rudiger Dornbusch, and Raúl Labán (Washington, D.C.: Brookings Institution, 1994), pp. 257–328.

[22]See Sergio Baeza and Raul Burger, "Calidad de las Pensiones del Sistema Privado Chileno," in *Quince Anos Despues: Una Mirada al Sistema Privado de Pensiones*, ed. Baeza and Francisco Margozzini (Santiago, Chile: Centro de Estudios Publicos, 1995), pp. 165–75. Official data show an arithmetic annual average real rate of return of 11.3 percent over the 18 years from 1981 to 1999. See Superintendencia de Administradoras de Fondos de Pensiones, *Boletin Estadistico,* no. 148 (Santiago, Chile, 1999), p. 339.

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to be invested in private retirement accounts. The opposition even to this from proponents of the current system is bitter. They dogmatically oppose even a marginal rollback in the elderly welfare state, fearing the loss of their political constituency if people are allowed to experience the benefits of even partial privatization. Worse, from their perspective, if the system became fully funded and people owned their own retirement accounts (even having the right to bequeath them to their spouses and children), it would become easy to go the next logical step, and remove the compulsory element altogether, moving a large increment back toward the free society that statist liberals have worked so hard for so long to abolish.

Risk and Return

Opponents of privatization have relied primarily on two objections. One is that privatization would subject workers to risks they do not now face, since individual stock returns vary, and the whole market rises and falls randomly. To their credit, few of these opponents deny either that the stock market rises and falls around a rising long term trend, or that stocks earn higher yields than does social security.

This "risk" objection is not persuasive, for various reasons. For one, the endlessly repeated assertion that the present system has no risks associated with it is simply wrong. The risk of default on benefits promised by the government is very high. Indeed, *marginal default has already begun.* In 1983, the government began gradually increasing the retirement age toward 67, and taxing benefits for middle and upper income earners. These taxes were increased in 1993. In addition, even if all present promises are kept, the real rate of return—nominal return above inflation—that can be expected by future retirees on their tax payments is a miserably low 2.9 percent for low-wage workers, and an even worse 0.58 percent for high-wage workers. The return obtained by blacks is actually *negative,* since their mean life expectancy is lower than that of whites.[23]

Now obviously, the closer the probability of an adverse outcome approaches to 100 percent, the *greater* is the risk being experienced by those facing that outcome. Only someone extraordinarily ignorant

[23]According to Thomas F. Siems, a senior economist and policy adviser at the Federal Reserve Bank of Dallas. See Siems, "Reengineering Social Security in the New Economy," *SSP #22, Cato Project on Social Security Privatization* (January 23, 2001), pp. 1 and 12.

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or extraordinarily dishonest would claim that *certainty* of the low returns obtained from the current system means citizens covered by that system face no risk, while citizens in a privatized system earning higher average returns with greater variability would experience risk. Yet that is precisely what is claimed every day by advocates of the current system who endlessly stress the variability of stock prices and returns while lauding the alleged "security" and stability of social security payments.

The mathematics of expected values simply settles the matter. The expected return on payments into the current system is mathematically far *less,* dollar for dollar, than that of money actually invested in the financial markets at the known, long-term levels, growth, and variability of market returns. From 1926 to 1996, U.S. stocks averaged a 13 percent nominal rate of return, even though returns varied in a normal frequency distribution all the way from -40 percent or worse (in very infrequent periods such as the great crash) to +60 percent or better, with two-thirds of the observations falling between -8 and +34 percent.[24] This 13 percent average return was about 11 percent net of inflation. Returns on social security payments have only averaged about 3.6 percent (and declining) in real terms. Even assuming pessimistically that the somewhat slower economic growth experienced by the U.S. since the early 1970s continues after privatization, one could conservatively expect nominal stock returns in the future to average at least 10 percent, with real returns of at least 8 percent.

The return on capital invested in the U.S. economy is greater than the rate of growth of wages, and it is the latter which determines the long-run rate of return in a government pay-as-you-go retirement system. Deducting a percentage point from market returns for administrative costs of the private retirement account managers would leave market returns earned by workers in a privatized system enormously higher than social security returns. Indeed, even were the economy to grow at far lower than normal rates in the future, the market average rate of return would still greatly exceed that of social security.[25]

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[24]Melissa Hieger and William Shipman, "Common Objections to a Market-Based Social Security System: A Response," *SSP #10, Cato Project on Social Security Privatization* (July 22, 1997), p. 7.

[25]See Andrew Biggs, "Social Security: Is It a Crisis that Doesn't Exist?" *SSP #21, Cato Project on Social Security Privatization* (October 5, 2000), pp. 1 and 30–32.

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Another reason the market risk argument fails is that nobody has to be subjected to market risks they do not wish to bear. A social security reform law can simply be written to allow any workers *who wish to do so* to invest their tax contributions in private accounts, leaving others to stay with the current system if they prefer. Other protections against bad investments by particular account managers can also be written into the law. These are the things the Chileans did, as mentioned above. What is to be noted about the American defenders of our current corrupt government Ponzi scheme, is precisely their arrogant and dictatorial unwillingness to allow others to choose for themselves. Their unremitting hostility to personal freedom is central to the whole matter.

Transition Costs

The second argument used in opposition to privatization concerns the transition cost. If current workers gain a property right in their retirement tax funds, how will we then finance payments to the current retirees? This would be a temporary problem, ending when the current generation of retirees passes on, and diminishing over time as that occurs, but still the transition cost would appear at first glance to be significant for some time. Easy answers seem available, and have been offered. Some libertarians, including myself, have long advocated financing this transition cost using money gained from sales of federal assets, such as federal land in the west, or of the many subsidized lending agencies of the federal government which chronically waste huge amounts of tax money. Money could also be saved in other federal programs, so that general tax revenue was made available. We could reduce our global military interventions, for example, and foreign basing of troops, such as those in Saudi Arabia, South Korea, and Japan. This would have the added benefit of at least marginally reducing the hatred of America by people around the world.

Conclusion

The question of financing the transition cost to a privatized retirement system is more penetrating than one might think, however, because identification of any easily available source of funds to finance that cost also identifies means of keeping the current social security system from going broke any time soon. The question then becomes, why switch to a private system at all? In those terms, however, the answer is again easy. First, we should switch because the

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negative sum game of intergenerational income transfer will be eliminated, retirees will be made much better off, and we will prosper materially as a nation from doing so as the saving rate rises, increasing productivity and economic activity. Because this effect will itself raise tax revenue over time, *there really will be no transition cost* (or rather, the gains will more than cover any such cost). Second, we should do so because government will become more honest and open by the removal of policy based on massive and deliberate deceits and appeals to base motives on the part of the public. And last, we should do so in order to restore once again, by a large increment, basic freedoms that so many Americans have allowed to be taken away from them in exchange for an illusory security.

BIBLIOGRAPHY

Baeza, Sergio, and Raul Burger. "Calidad de las Pensiones del Sistema Privado Chileno." In *Quince Anos Despues: Una Mirada al Sistema Privado de Pensiones*, edited by Sergio Baeza and Francisco Margozzini. Santiago, Chile: Centro de Estudios Publicos, 1995.

Biggs, Andrew. "Social Security: Is It a Crisis that Doesn't Exist?" *SSP #21, Cato Project on Social Security Privatization* (October 5, 2000).

Cogan, John F. *Negative Income Taxation and Labor Supply: New Evidence from the New Jersey-Pennsylvania Experiment.* Santa Monica, Calif.: Rand Corporation, 1978.

Congressional Budget Office. *Social Security and Private Saving: A Review of the Empirical Evidence.* Washington, D.C.: U.S. Government Printing Office, 1998.

Council of Economic Advisers. *Economic Report of the President.* Washington, D.C.: U.S. Government Printing Office, 2001.

Diamond, Peter, and Salvador Valdez-Prieto. "Social Security Reforms." In *The Chilean Economy: Policy Lessons and Challenges*, edited by Barry Bosworth, Rudiger Dornbusch, and Raúl Labán. Washington, D.C.: Brookings Institution, 1994.

Edwards, James Rolph. "American Liberty in Decline, 1865–2000: The Progressive Substitution of State Coercion for Individual Cooperation." *Montana Professor* 11, no. 1 (Winter 2001).

———. "Deflating the Union Mythology." *The Margin* (Fall 1992).

Edwards, Sebastian. "The Chilean Pension Reform: A Pioneering Program." In *Privatizing Social Security*, edited by Martin Feldstein. Chicago: University of Chicago Press, 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Ehrlich, Isaac, and Jian-Guo Zhong. "Social Security and the Real Economy: An Inquiry into Some Neglected Issues. *American Economic Review Papers and Proceedings* 88, no. 2 (May 1998).

Federal Reserve Bank of Cleveland. "Medicare Insolvency." *Economic Trends* (May 1997).

Federal Reserve Bank of San Francisco. *Economic Newsletter* (June 25, 1999).

Feldstein, Martin. "Social Security and Saving: New Time Series Evidence." *National Tax Journal* (June 1996).

Gruber, Jonathan, and David Wise. "Social Security and Retirement: An International Comparison." *American Economic Review Papers and Proceedings* 88 no. 2 (May 1998)

Hall, Robert E., and J. David Ferguson. *The Great Depression: An International Disaster of Perverse Economic Policies.* Ann Arbor: University of Michigan Press, 1998.

Hieger, Melissa, and William Shipman. "Common Objections to a Market-Based Social Security System: A Response." *SSP #10, Cato Project on Social Security Privatization* (July 22, 1997).

Lindsey, Brink. "Social Insecurity." *Reason* 33, no. 10 (March 2002).

Murray, Charles. *Losing Ground: American Social Policy, 1950–1980.* New York: Basic Books, 1984.

Payne, James L. "Unhappy Returns." *Policy Review* (Winter 1992).

Robbins, Lionel. *An Essay on the Nature and Significance of Economic Science.* New York: Macmillan, 1932.

Siems, Thomas F. "Reengineering Social Security in the New Economy." *SSP #22, Cato Project on Social Security Privatization* (January 23, 2001).

Superintendencia de Administradoras de Fondos de Pensiones. *Boletin Estadistico,* no. 148. Santiago, Chile, 1999).

Tullock, Gordon. "The Welfare Costs of Tariffs, Monopolies, and Theft." *Western Economic Journal* 5 (June 1967).

Vedder, Richard K. "Federal Regulation's Impact on the Productivity Slowdown: A Trillion Dollar Drag." Center for the Study of American Business. *Policy Study No. 131* (July 1996).

Vedder, Richard K., and Lowell Gallaway. *Out of Work.* New York: Holmes & Meier, 1993.

Weaver, Carolyn. "Support of the Elderly Before the Depression." *Cato Journal* 7 no. 2 (Fall 1987).

Woodson, Robert L. *Breaking the Poverty Cycle: Private Sector Alternatives to the Welfare State.* Harrisburg, Penn.: Commonwealth Foundation, 1989.

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HAYEK ON TRADITION

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Traditional morality is rejected today as commonly as it was once taken for granted. And if the specific content of that morality, especially where it touches on matters of sexuality, is widely regarded with contempt, the meta-ethical notion that one ought to respect a moral code *precisely because it is traditional* gets even worse treatment: It is held to be *beneath* contempt. Modern educated people take it to be a sign of their modernity and education that they refuse to accept the legitimacy of any institution or code of behavior, however widespread, ancient, and venerable, which has not been rationally justified. Traditional morality stands doubly damned in their eyes: It is not rationally justifiable, and its adherents fail even to attempt to justify it so. The traditional moralist, they take it, is a slave not merely to the "conventional wisdom" but to the conventional wisdom of people long dead. He is in the grip of irrationality, superstition, and ignorance; worst of all, he is out of date.

This attitude toward tradition seems *obviously* correct to sophisticated, enlightened, educated moderns—so obvious that it is, interestingly, itself rarely if ever seen to be in need of justification. This might naturally raise a few questions, or at least eyebrows: Why is it desperately imperative for traditionalists to justify their attitude toward

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traditional morality, but not for moderns to justify *theirs*? Exactly what *is* it rationally to justify a moral code or institution anyway? Is there some sort of decision procedure or test that traditional attitudes fail but modern ones pass with flying colors? In fact, though, the typical modern eyebrow is utterly unmoved, and such questions somehow never seem to enter the average enlightened, always questioning mind.

They have, however, always been at the forefront of the conservative mind. Indeed, it has been a commonplace of conservative thought from Edmund Burke onward that it is often the self-appointed representatives of reason, enlightenment, and progress who are the least self-critical and most dogmatic of men, and whose programs of moral and social uplift—from the French Revolution to the Russian Revolution to the sexual revolution—have been far more damaging to human well-being than any traditional arrangements they displaced. True, not all educated moderns yet grant the disastrousness of the last revolution —but then, until very recently, few of them would have granted even the more obvious disastrousness of the Russian Revolution. The enlightened consciousness, though always quick to condemn the most trivial flaws of even long-dead traditional institutions, is nothing if not infinitely patient and tolerant with respect to the clear and present failures of its own favored projects.

But the conservative critique extends beyond the mere unmasking of enlightened hypocrisy, and exposes a deeper irony. For it turns out that where rational justification is concerned, it is precisely the traditionalist, and not his modern critic, who has the upper hand. Tradition, being nothing other than the distillation of centuries of human experience, itself provides the surest guide to determining the most rational course of action. Far from being opposed to reason, tradition is inseparable from reason, and blind without it. The so-called enlightened mind thrusts tradition aside, hoping to find something more solid on which to make its stand, but there is nothing else, no alternative to the hard earth of human experience, and the enlightened thinker soon finds himself in mid-air. It is, thus, no surprise that, upon finding himself in free fall, the modernist so often transforms himself into a postmodernist and abandons reason altogether. (One might have thought a return to tradition would be the more appropriate response for someone interested in reason. But then, was it ever *truly* a love of reason that was in the driver's seat in the first place? Or was it, rather, a hatred of tradition? Might the latter have been the cause of the former, rather than, as the enlightened pose would have it, the other way around?)

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The rationality of tradition and the irrationality of hostility to it were themes of Burke's *Reflections on the Revolution in France*.[1] But it is possible that the work of F.A. Hayek (which was largely inspired by Burke) presents the most fully developed and compelling account of these matters, an account presented in terms the post-Darwin enlightened modernist must find difficult to dismiss out of hand, viz., a theory of cultural evolution by means of a kind of natural selection. The aim of the present essay is to articulate and defend Hayek's position—defend it against the objections of Hayek's detractors, of course, but also against the misunderstandings of many of his admirers. Some of these admirers are keen indeed on the "evolution" part of his views, but, being less keen on the "tradition" part, make him out to be an advocate of constant change, of "dynamism" over "stasis."[2]

But he was not that at all, at least, not in the sense these would-be Hayekians imagine. Technological advance, market innovation, and the like were things of which he was a great defender, but those are not the things at issue here. Where *fundamental moral institutions* are concerned, Hayek was very much in line with the Burkean conservative tradition, a tradition wary of tampering with those institutions (including the specific moral institutions underlying the free market order rightly valued by libertarians). Of course, Hayek did not rule out *all* change to these institutions in an absolute way, but then, neither do conservatives. At issue is where the default position lies, with who gets the benefit of the doubt in the debate between the traditionalist and the moral innovator. And in this dispute, Hayek is indisputably on the side of the conservative.[3] He, as much as Burke, insists that though tradition

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[1]Edmund Burke, *Reflections on the Revolution in France* (London: J. Dodsley, 1791).

[2]See Virginia Postrel, *The Future and Its Enemies* (New York: Free Press, 1998).

[3]Hayek is on the side of the conservatives here regardless of whether he counts as "a conservative." Libertarians who are hostile to the conservatism that is so often politically allied with libertarianism often refer to Hayek's famous postscript to *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), entitled "Why I Am Not a Conservative," as if it settled the issue of whether or not he sympathized with traditional morality.

Of course, it settles nothing, any more than does the fact that Hayek also rejected the label "libertarian" (in the very same postscript!) prove that he did not support a free economy. For one thing, Hayek's remarks about conservatism in that essay are by no means unfriendly. On p. 397, he says it is "a legitimate, probably necessary . . . attitude of opposition to drastic change." Though here and elsewhere, e.g., in F.A. Hayek, *New Studies in Philosophy,*

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(to paraphrase J.L. Austin on ordinary language) might not always give us the last word, it *must* always give us the *first* word.[4]

THE VARIETIES OF TRADITIONALISM

We ought to begin by distinguishing Hayek's claim about the value of tradition from other claims that are often made for it. It is often held, for instance, that a traditional practice has value simply because it is traditional or customary, not in the sense that its being traditional is *evidence for* its having (some independent) value, but in the sense that being customary or traditional is *in itself* valuable. The suggestion is that even practices which of themselves may be unimportant—if they did not exist, we would not have need to invent them—nevertheless

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Politics, Economics, and the History of Ideas (London: Routledge and Kegan Paul, 1978), p. 19, Hayek contrasts his own views with conservative ones because of his openness to *some* change. An openness to change of precisely the Hayekian sort we'll be examining has characterized Anglo-American Burkean conservatism from the time of Burke himself, who held that "a state without the means of some change is without the means of its own preservation." Burke, *Reflections on the Revolution in France*, par. 36. Indeed, Hayek's target in the essay in question was primarily the statist conservatism of the continental European tradition, not the Whiggish conservatism of this Burkean tradition.

Furthermore, whatever he might have said in the postscript, and whether he would have self-applied the label "conservative," it is a commonplace among Hayek scholars that his thought in later years took on, in substance, a more conservative veneer, precisely for the reasons we will explore in what follows. See, e.g., Andrew Gamble, *Hayek: The Iron Cage of Liberty* (Boulder, Colo.: Westview Press, 1996), p. 108; John Gray, *Hayek on Liberty*, 3rd ed. (New York: Routledge, 1998), p. ix; Roland Kley, *Hayek's Social and Political Thought* (Oxford: Clarendon Press, 1994), p. 169 n. 18; Jerry Z. Muller, *Conservatism: An Anthology of Social and Political Thought From David Hume to the Present* (Princeton, N.J.: Princeton University Press, 1997), pp. 316–18; and Anthony O'Hear, *Beyond Evolution* (Oxford: Clarendon Press, 1997), pp. 152–54.

[4]See J.L. Austin, *Philosophical Papers*, 3rd ed. (Oxford: Clarendon Press, 1979), p. 185. The eloquent passage to which I allude expresses, incidentally, a very conservative, and very Hayekian, attitude toward ordinary language and the conceptual apparatus it embodies. And it indicates that wildly revolutionary projects in metaphysics, which reject wholesale that apparatus—one thinks of the current fad for "eliminative materialism" in philosophy of mind—are as misguided as radical programs in morality, and equally susceptible to a Hayekian critique. But that is a topic for another time.

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may provide certain benefits simply because they just happen to have been widely accepted in a community for a long period of time. Part of the idea here would be that human beings are, by nature, creatures of habit. We manage best when we can operate within a stable environment, and the stability, and thus predictability, of that environment are themselves intrinsically valuable, irrespective of the particular elements the presence of which we can rely on. Hence, in many cases (though obviously by no means in all), even a bad government is better than no government at all, precisely because the presence of even a flawed system of law and order provides a better framework for action than an atmosphere of sheer lawlessness. Sometimes—though again, obviously not always—revolutionaries can be dangerous, not merely because of some harebrained ideology they want to impose on everyone, but just by virtue of being revolutionaries.

Another aspect of this idea is that traditions, being by their nature *shared* by a community, give the members of a community a sense of belonging and common purpose that are necessary if the community is to survive and thrive. The cohesiveness of a family, for example, is enhanced by its customary practices—traveling year after year to stay with grandmother for Christmas, say. A larger social group can maintain its identity over *millennia* by adhering rigidly to a certain set of practices: hence, the saying that it isn't the Jews who kept the Sabbath so much as the Sabbath that kept the Jews. Presumably, some other set of customs could, in principle, have done the job equally well—traveling to Aunt Agatha's house instead, or observing Sunday—but the point is that *some* set of customs had to do it, and once this or that particular set takes root, it is important that it persist if the community is to persist.

This set of ideas is clearly a part of the conservative case for respecting tradition, but though Hayek would surely endorse it, it is not what he has in mind in his own defense of it. Hayek's view is that the *specific content* of a traditional practice is indeed often important. It isn't *just* a matter of its happening to be traditional; rather, its being traditional is taken by Hayek to be evidence that it has some independent *intrinsic* value. It is vital to keep this in mind, for Hayek's position is sometimes mistakenly taken to entail a kind of relativism —as if the traditional practices prevailing in one society must be the best for *that* society, and the ones prevailing in another are the best for *it*, with there being no fact of the matter about which society's traditions are superior. But Hayek believes nothing of the sort; indeed, he insists on the objective superiority of some traditions over others. This

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sort of relativism could be defended only with regard to traditions (like traveling specifically to grandmother's house every Christmas) the value of which lies *solely* in the fact that they are traditional. Hayek is not primarily interested in that sort of tradition.

A second defense of tradition appeals to the way in which ideas and practices can often be fully understood only in the context of an ongoing tradition of thought or practice within which the interrelationships between the ideas and practices, as well as their implications, are gradually developed. Law is a good example of this: There is really no such thing as a fully articulated set of laws which can be given once and for all, as a closed system which covers all imaginable cases. Instead, the implications of a given set of principles are slowly and in a piecemeal fashion worked out over the course of generations, as unnoticed implications of the law are discovered and it is applied to new and unforeseen situations. The Catholic Church's theological position rests in part on something like this notion of tradition: There is a sense in Catholicism in which the Church's understanding of its basic doctrines develops over the centuries, as the interrelationships of doctrinal ideas, and their implications, are drawn out, often as unforeseen problems (i.e., heretical and schismatic movements) are encountered—hence, the lengthy, gradual development of the dogmas concerning the Trinity, Incarnation, Mariology, and so forth. And, as G.K. Chesterton pointed out, development in the case of Catholicism—and, we might add, within this notion of tradition in general—does not mean arbitrarily arbitrary tacking on of foreign elements, but rather a natural evolution from within:

> When we talk of a child being well-developed, we mean that he has grown bigger and stronger with his own strength; not that he is padded with borrowed pillows or walks on stilts to make him look taller. When we say that a puppy develops into a dog, we do not mean that his growth is a gradual compromise with a cat; we mean that he becomes more doggy and not less.[5]

Philosopher Alasdair MacIntyre seems also to have something like this in mind in his appeal to the notion of tradition as a key to understanding the nature of rationality: A rational belief system or moral outlook is, in his view, one which belongs to a tradition of thought within which the basic conceptions of the tradition have gradually been worked

[5]G.K. Chesterton, *Saint Thomas Aquinas* (New York: Doubleday, 1956), pp. 27–28.

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out and modified in a systematic way to deal with challenges to it and with new evidence; and one tradition is rationally superior to others when it is better able to solve the problems facing it using its own internal resources than others are, i.e., when it possesses a greater degree of internal coherence.[6]

Hayek's work clearly expresses ideas that resonate with this conception of tradition as the gradual, internal working out of the implications of a system of thought or practice. This is most evident in *Rules and Order*, wherein he examines the evolution of rules of practice—as embodied in systems of morality, and especially within the common law—as a process whereby often inexplicit or tacit rules gradually become articulated and their implications drawn out as new situations arise.[7] Law and morality, in his conception, form an organic and evolving structure rather than an artificial closed system created by fiat—a *spontaneous order* which, in the nature of the case, *cannot* be fully articulated all at once, but only progressively, and even then not in any finalized way, for there is no limit in principle either to new circumstances or to the system's inherent but unknown implications. This is part of the reason socialism is impossible, in Hayek's view: Systems of law—including the laws by which a scheme of "just distribution" of wealth would have to be implemented—are simply too complex for human beings consciously to design, for the circumstances the law has to cover are, like the economic information a socialist planner would need in order to do his job, complex, fragmented, and dispersed, unknowable to any single mind.[8] A workable system of law must, at the most basic level anyway, evolve spontaneously, with conscious human design involved at most in refining it, tinkering around its edges.

Having said this, it must be understood that when Hayek defends tradition by appeal to a theory of cultural evolution, he doesn't have in mind the sort of defense just described. As we will see, the process of *cultural* evolution is not the same thing as the evolution from within a system of the implications of its basic principles; and, after all, there

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[6]Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, Ind.: University of Notre Dame Press, 1984); and Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1988).

[7]F.A. Hayek, *Rules and Order*, vol. 1 of *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1973).

[8]For this critique of socialism, see, e.g., F.A. Hayek, *Individualism and Economic Order* (Chicago: University of Chicago Press, 1948).

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are any number of systems of morality and law that have developed internally in this way, not all of which Hayek would endorse. Nevertheless, the foregoing considerations are relevant to a proper understanding of Hayek's argument about cultural evolution. The process of cultural evolution, in Hayek's conception, like biological evolution, involves a kind of competition between traditions, rather than between organisms. The traditions in question, however, are not isolated rules and practices, but *systems* of rules and practices—complex systems that evolve *from within*, as well as compete with other traditions *without*, over time. There are, then, really *two* processes of evolution going on in the history of systems of law, morality, custom and the like: the *internal* evolution by which the implications of the system are gradually developed, and the *external* evolution by which the whole internally evolving system competes with other internally evolving systems, and either out-competes them or is out-competed itself. This latter process of evolution is what Hayek's theory of cultural evolution is concerned with.

We can note, though, that what has been said thus far already indicates how misguided are the interpretations of Hayek on which his conception of evolution amounts to a radical "dynamism." For the evolution *from within* of a system of rules and practices is, for Hayek, an organic evolution of the sort Chesterton described. It is *not* typically a process whereby what has come before gets overthrown or replaced by its opposite—any more than a puppy turns into a cat—but instead where what is tacit becomes explicit and its consequences are drawn out, and where the whole is made more systematic and consistent—as when an infant grows into an adult, where the change is significant but gradual and coherent with what came before, and where even radical changes (the loss of baby teeth, growth of facial hair, menopause) leave the system as a whole basically intact.[9] This internal evolution is, thus, an essentially *conservative* rather than revolutionary process, in which the basic criterion for the legitimate change of a rule is, for Hayek, the discovery of its *inconsistency* with some existing, more fundamental rule.[10]

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[9]F.A. Hayek, *The Mirage of Social Justice*, vol. 2 of *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1976), pp. 24–27.

[10]Hayek, *The Mirage of Social Justice*, p. 24; Hayek, *New Studies*, p. 19; F.A. Hayek, *The Political Order of a Free People*, vol. 3 of *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1979), pp. 161 and 171.

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The wholesale adoption of a "new morality" or the injection into an ancient system of new rules that *contradict* some older, more fundamental rules is the farthest thing from Hayek's mind:

> Since we owe the order of our society to a tradition of rules which we only imperfectly understand, *all progress must be based on tradition*. We must build on tradition and can only tinker with its products.[11]

The socialistic adoption of rules absolutely at odds with the fundamental principles of private property and contract that have governed Western society for millennia is a good example of a *revolutionary* change, something that is *not* a result of a natural evolutionary process, internal to the system. By contrast, the abolition of slavery in the West was precisely an internal evolutionary process, a natural outgrowth of the notions of political liberty and property (in this case self-ownership) which had long governed Western society implicitly, but which awaited their full and consistent articulation and application. And, as with property and contract, Hayek took the family to be an institution essential to the rise of capitalism and the prosperity of the West.[12] Thus, the traditional rules governing sexual morality, since they have long served to safeguard the family, would hardly seem the sort of thing readily alterable on Hayekian grounds, contra some libertarian (or rather libertine) Hayekians. The sexual revolution is surely just that—a *revolution* seeking to overthrow traditional rules wholesale, not a natural evolution that merely draws out their implications.

The conservatism of this internal evolution parallels, it should be noted, the conservatism of biological evolution. We are used to thinking of the latter as a process of radical change, but evolutionary change is radical only in a relative sense, and only over enormous stretches of time. The transformation of one species into another is an *extremely gradual* affair, after all. Indeed, that's the *whole point* of evolution as an explanatory hypothesis, in that the changes it posits, being gradual,

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[11]Hayek, *The Political Order of a Free People*, p. 167, emphasis in the original. If I might be permitted to push the Catholic parallels a little further, we might note here the analogue between revolutionary change to a tradition and *heresy*, nicely defined by Hilaire Belloc in *The Great Heresies* (Rockford, Ill.: TAN Books, 1991), p. 2, as "the dislocation of some complete and self-supporting scheme by the introduction of a novel denial of some essential part therein."

[12]F.A. Hayek, *The Fatal Conceit: The Errors of Socialism* (Chicago: University of Chicago Press, 1988), p. 137.

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are comprehensible in naturalistic terms.[13] The changes are, from generation to generation, usually relatively trivial in themselves. Even when they add up to something significant, much more is conserved than is lost. To take just one obvious example, note the same basic skeletal structure (backbone, four limbs, etc.) that has persisted throughout the sequence from lobe-finned fishes to amphibians to reptiles to mammals to man. And even the most significant changes take *millions* of years to occur, compared to the piddling *thousands* of years at most that systems of human law and moral practice have been evolving. Thus, we should hardly expect *radical* changes to the latter, changes that overthrow (rather than refine) what has come before, especially since human nature itself, which partly determines the content and efficacy of systems of law and morality, has remained essentially fixed since the time human beings first evolved.[14] Indeed, given the essential biological fixity of human nature, the internal evolution of moral and legal systems is surely more like the more modest changes occurring within a *particular creature* over its lifetime, as the kind of creature it is—or at most like the non-trivial but still relatively conservative change that can occur *within* a species (as with the varieties that breeds of dog

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[13]Unless one goes in for a "punctuated equilibrium" model of evolution à la Stephen Jay Gould, which I (and most evolutionary biologists) do not, precisely because it makes evolution *in*comprehensible. But I should note that Hayek's position does not assume the truth of any kind of *biological* evolution, for Hayekian *cultural* evolution could operate even given a creationist account of the origin of species. Presumably, though, those most inclined to be hostile to Hayek's position and its conservative moral implications aren't likely to be creationists.

[14]I am aware that there are those, e.g., feminists and the like, who deny the reality of such a thing as human nature, but I am not aware of there being any merit in such denials. In any case, sociobiologists have made a persuasive case (if, given its obviousness, one was needed) that there is such a thing as a biologically grounded human nature, even if some of the specific claims they sometimes make about its constituent elements are controversial. For a popular introduction, see Robert Wright, *The Moral Animal: The New Science of Evolutionary Psychology* (New York: Vintage Books, 1994). Hayek, to be sure, made some critical comments about sociobiology, but his objection was to the assumption made by some sociobiologists that *all* widespread human practices must have some *genetic* basis, whereas many practices, in Hayek's view, are products merely of the process of cultural rather than biological evolution, and not innate. Sociobiology needn't be committed to the strong thesis Hayek rejects. For his criticisms, see Hayek, *The Political Order of a Free People*, pp. 153–55; and Hayek, *The Fatal Conceit*, p. 24.

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can take, while still being breeds of *dog*) —than it is like the more profound changes occurring in the transition *between* species.

HAYEKIAN CULTURAL EVOLUTION

The Natural Selection of Traditions

This conservatism is only underlined by Hayek's account of the cultural evolution of traditions, to which we now turn—an account developed in a number of writings, but perhaps most fully in the work in which Hayek summed up his system of thought, *The Fatal Conceit*.[15] On this account, we are to think in terms of various traditions, conceived of as systems of rules of conduct and their associated social institutions, engaging in a kind of competition, though not necessarily *consciously* competing, any more than animal species knowingly compete with each other. Rather, the idea is that different groups of human beings tend to follow different rules of conduct, embodied in diverse cultural, legal, religious, and moral institutions.[16]

Some of these systems of rules will, as it happens, enable the groups following them to adapt to their natural and social environments more successfully than will the rules followed by other groups allow those groups to adapt to *their* environments. In some cases, there may even be rules that are so ill-suited to the well-being of the group following them that they will be positively maladaptive. The relatively more adaptive rules will tend to preserve the groups following them, allowing such groups to grow and prosper; the less adaptive rules will tend to cause the groups following them to shrink, become impoverished, or in other ways perform less well than the groups following the more adaptive rules. As a result, the more adaptive rules will themselves tend to be preserved and become more widely followed, while the less adaptive rules will tend to decline in influence, or (especially when absolutely maladaptive) even die out. For not only will the groups following the adaptive rules survive and expand, thus preserving the rules while the groups following less adaptive rules will tend to decline, taking

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[15]See also Hayek, *New Studies*, chap. 1; and Hayek, *The Political Order of a Free People*, pp. 153–76.

[16]In line with a current intellectual fashion started by Richard Dawkins, one might want to refer to these as "memes," and then again, one might not want to do this. In any case, there is nothing in Hayek's account that need commit us to the details of Dawkins's would-be science of "memetics." See Richard Dawkins, *The Selfish Gene*, 2nd ed. (Oxford: Oxford University Press, 1989).

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their rules down with them, but the rules, being successful, will tend to attract new followers away from relatively unsuccessful rules.

Thus, we have a mechanism that, in many ways, parallels Darwinian biological evolution by natural selection in that the fittest traditions survive and thrive while the unfit ones get shunted off to the sidelines or disappear altogether. Note, though, that this is not "Social Darwinism" as popularly understood. It is neither races nor even individual human beings which compete and get selected in or out; it is *traditions*.[17] Nor are these traditions somehow genetically determined. They are, instead, inculturated, and any human being or group of human beings can, in principle, adopt any particular tradition. But they need not, and indeed generally do not, adopt them *knowing* the good or bad effects of doing so, in Hayek's view. For the benefits or harms of systems of rules of conduct are usually not known, or even knowable, before the fact, for the familiar Hayekian reason that we simply cannot determine a priori all the relevant circumstances that might make a set of rules adaptive or maladaptive. At best, this can be known only after the fact, as the consequences of different groups following different rules can then be observed. Even then, given the inherent complexity of human affairs, we do not always know *all* the effects the following of a certain tradition has had.

As a result, the conscious reasons for a group's adoption of certain rules often bear little relationship to the reasons those rules end up surviving, viz., the beneficial, though unforeseen *functions* served by the rules. The conscious reasons may have been religious, or even superstitious. Thus does the enlightened, educated, modern person often scornfully reject such rules as irrational. But in doing so, he misses the point, for what is important is not why a group consciously accepts certain rules, but rather what benefits accrue to the group following those rules, regardless of whether the group following them is aware of the link between the rules and the benefits.

Here we have another parallel to biological evolution: A mutation might or might not be beneficial, depending on the environment of the creature exhibiting it and the rest of that creature's biological makeup. Either way, the *source* of the mutation is irrelevant. It is, after all, not as if the first birds *consciously chose* to develop wings, or, having unconsciously developed them, realized their utility and then decided

[17]It is in this sense that Hayek, in *The Fatal Conceit*, p. 23, says that "the mechanism of cultural evolution is not Darwinian." By no means does he deny all parallels between biological and cultural evolution.

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to use them to fly. Rather, this mutation *just happened* to have the benefit of allowing for flight, and, hence, gave the organisms exhibiting it an adaptive advantage of which they were and are utterly unaware. It would be silly to accuse birds of irrationality for growing and using their wings without first giving a "rational justification" for doing so. It is equally silly, Hayek in effect argues, to reject traditions as irrational *merely* because they were and are adopted without such a justification.

But the parallel with biological evolution gives us a clue as to why Hayek's account of cultural evolution nevertheless *provides* a rational justification for tradition. The reason biological mutations typically survive, when they do survive, is precisely because they impart some advantage to the organisms bearing them. Had they been maladaptive, the organisms exhibiting them would have died out, and thus the mutations would have died out. Now we very often can determine what function a particular mutation serves—the development of wings, fins, and the like present obvious examples. But we *need* not know the function in order to conclude that some function or other is likely served by a surviving mutation. The very mechanism of natural selection entails a *presumption in favor* of there being some function, even if we do not and cannot know what it is, and even though there are cases where a *non*-functional trait survives (although even then, such a trait is usually genetically linked to a trait which *does* have a function). By the same token, the mere fact that a tradition has survived gives that tradition, in Hayek's view, a presumption in its favor. We have no reason to assume that it serves no purpose, merely because we do not know what that purpose is; we have, on the contrary, by the fact of its very survival, a reason—a defeasible reason to be sure, but a reason all the same—to assume that it *does* serve *some* function.

Thus, contrary to the enlightened "progressive," we ought to put the burden of proof on the person who wants us to abandon a tradition to show that it has no function, indeed, to show that it is positively dysfunctional—and to show in particular that it is inconsistent with some other and more fundamental tradition—rather than on the person who wants to defend tradition. For the assumption of the functionality of a tradition, and thus the assumption that it ought to be preserved, is, as with the assumption of the functionality of biological traits, the obviously rational default position to take.

In any case, as with biological traits, we often *do* know, or at least can reasonably surmise, the functions served by traditional practices. The

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institutions of stable private property and contract serve as Hayek's chief examples. These are absolutely essential to the functioning of a free market economy, and such an economy is, for the reasons Hayek and Ludwig von Mises articulated in their case against the possibility of rational calculation under socialism,[18] and according to all the empirical evidence of human history, the one most conducive to prosperity, technological innovation, and general material well-being. Indeed, the contest between capitalism and Marxism during the twentieth century provided, in Hayek's view, the starkest example of how traditions can compete, with one emerging as clearly superior. Marxism was an intrinsically dysfunctional system, and certainly less adaptive than was capitalism. Its death illustrates perfectly the general picture Hayek paints of the demise of an inferior tradition, in that its main representative, the Soviet Union, imploded, while other Marxist societies have either begun to adopt the practices of the more "fit" capitalist world (China) or fallen into greater decrepitude and isolation (Cuba, North Korea).

THE VINDICATION OF COMMON SENSE

Property and contract are far from the only practices whose functions are apparent. The functions served by the various components of traditional sexual morality, for instance, are becoming increasingly evident to social scientists, sociobiologists, and even the occasional philosopher.[19] This is a subject requiring a full-length treatment of its own, but to take only the least controversial point, it is clear that the stability of the family is required for the well-being of children, and that strong social controls are needed on the greater relative promiscuity of men if stable families are to exist.[20] It is no surprise, then, that

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[18]See Hayek, *Individualism and Economic Order*; and Ludwig von Mises, *Socialism: An Economic and Sociological Analysis* (New Haven, Conn.: Yale University Press, 1951).

[19]For an example from social science, see Charles Murray, *Losing Ground: American Social Policy 1950–1980*, 2nd ed. (New York: Basic Books, 1994); for sociobiology, Wright, *The Moral Animal*; and for philosophy, Roger Scruton, *Sexual Desire: A Moral Philosophy of the Erotic* (New York: Free Press, 1984); and Michael E. Levin, in his debate with Laurence M. Thomas, *Sexual Orientation and Human Rights* (New York: Rowman and Littlefield, 1999).

[20]Hayek seems to endorse this notion in F.A. Hayek, "Individual and Collective Aims," in *On Toleration*, ed. Susan Mendus and David Edwards (Oxford: Clarendon Press, 1987), pp. 37–38.

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there have been rather stringent controls on sexual behavior in all past cultures, and that, whatever their variations, these controls have always tended to force individuals to confine that behavior within the bounds of marriage. (Polygamous societies are no exception to this, since polygamous marriage is still *marriage* – it forces the man to engage in sexual behavior only under the condition that he be responsible for the consequences of that behavior, viz., the support of his children and their mothers.)

Of course, common sense reflects, and has always reflected, the indispensability of private property and the basic utility of traditional sexual morality. Everyone knows that without secure title to the products of one's labor, there is no incentive to labor at all; and everyone, even the most "sexually liberated" feminist, knows that, as mothers used to tell their daughters, "a man won't buy the cow when he can get the milk for free." Common sense also reflects many things that feminists and other self-described progressives are loathe to acknowledge, at least in public:

- that men and women differ considerably in matters of temperament and basic physical aptitudes;
- that people from different cultures often vary significantly in their central values, work habits, the importance they attach to education, and the like;
- that where morality, politics, and practical affairs in general are concerned, younger and less experienced people are usually far more ignorant and naïve than are older and more experienced people, so that their opinions ought to count for less; and so forth.

And what these and other elements of common sense share with private property and traditional sexual morality is that they, too, are ancient. Such venerable pieces of folk wisdom are considered *common* sense precisely because nearly *everyone* has *always* believed them, not only now, but in all past ages.

There has always been a tendency for those sympathetic to tradition to be inclined to respect common sense as well, and Hayek's defense of tradition makes evident why this should be so. Hayekian considerations clearly entail just the attitude toward the above (and other) examples of common sense, however "politically incorrect," that those considerations lead us to take toward tradition. They entail the attitude toward common sense that common sense takes toward itself: It is probably correct, and in any case, we ought to be highly

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skeptical of anyone who doubts it, putting the burden of proof on *him*. Respect for common sense is of a piece with respect for tradition. Indeed, tradition itself is but the common sense of the ages.[21]

There is a tendency these days for people—in particular, for highly educated and self-consciously modern people—to hold something like the diametric opposite of this attitude toward common sense. This tendency treats beliefs that are almost universally held by people throughout human history, and supported by the testimony of the widest human experience, as if they had a *presumption against* them, as if they are *likely* to be false, despite the fact that they are so widely believed and even *precisely because* they are so widely believed. This is a corollary of the hostility to tradition exhibited by such self-consciously modern and educated people.

The reasons for this attitude are largely the same as the reasons underlying hostility to tradition, viz., the (allegedly) unjustified and unjustifiable character of much of common sense. But there are other reasons, the most important being a factor Michael Levin has labeled the "skim milk" fallacy—the fallacy of assuming that, just as "skim milk masquerades as cream," in general "things are never what they seem, or, to put it more abstractly, that science always explains away appearances in terms of their opposite," so that common sense can be presumed to be wrong.[22] The origins of this fallacy lie in the overthrow of a number of common sense assumptions about the world by advances in modern science—Einstein's Special Theory of Relativity, Darwinian evolution, and so forth. The (implicit) inference has been drawn from these advances that common sense must *in general* be wrong. And, as Levin observes, though our being mistaken with respect to this or that feature of the world doesn't in the least entail that *all* such beliefs are suspect, it is hardly surprising that human beings should often have gone wrong with respect to their assumptions about

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[21]The reader might think this connection between tradition and common sense is too obvious to need pointing out, but that it *does* merit pointing out is evidenced by the fact that there have been those who styled themselves defenders of common sense who were anything but friendly toward tradition. Two obvious examples are Thomas Paine and Bertrand Russell.

[22]Michael Levin, "How Philosophical Errors Impede Freedom," *Journal of Libertarian Studies* 14, no. 1 (Winter 1998–99), p. 127. David Stove has also criticized fallacies of this sort, though not under Levin's "skim milk" label. See *The Plato Cult and Other Philosophical Follies* (Oxford: Basil Blackwell, 1991), esp. chaps. 1 and 4.

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the large-scale structure of space-time, the origins of life, and so forth —about phenomena, that is, that are far beyond the scale of everyday human concerns, and inessential to day-to-day survival and reproductive success. Neither biological nor cultural evolution plausibly would guarantee that we would generally go right with respect to such things.

Nevertheless, where beliefs about *everyday human affairs*, about matters that are not remote from us but close at hand, are concerned, things are very different. Here, success in our day-to-day endeavors, including survival and reproduction, depends crucially on our being right, most of the time and for the most part, about human nature and social life. Evolution (biological and cultural) would tend to ensure that we not go too far wrong about such things. Unlike common sense views about large-scale phenomena, common sense attitudes about the *human* world are actually very *unlikely* to be mistaken.[23]

It is not at all surprising, then, that sociobiologists, in their application to human beings of biological-evolutionary theory, should tend so often to confirm the innateness of human tendencies that common sense has long regarded as natural—much to the fury of feminists and other "skim-milkers" (as Levin calls them). This is precisely what we should expect. Nor, more to the present point, is it surprising that, in Hayek's theory of cultural evolution, we should end up more or less with a modernized version of Burke's defense of tradition and prejudice as the embodiment of the store of social knowledge built up through millennia of human experience. "Prejudice" of the sort embodied in common sense plays a role similar to the role that Hayek argues is played by prices in a market economy: Just as prices serve as signals to rational economic behavior, distilling for us into a manageable unit a vast complex of economic circumstances that we could not possibly survey or comprehend, so too do common sense generalizations, rules of thumb, and other bits of folk wisdom encapsulate centuries of rich human experience to which we could not otherwise have direct access. It is precisely because they encapsulate this experience that they have survived. Had they instead embodied falsehoods (as progressives assume), they would likely have long since been weeded out by the cultural evolutionary mechanism of natural selection.

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[23]The "skim milk" fallacy can accordingly be seen as an instance of the scientism that Hayek so often condemned—of the illicit tendency to apply to the study of human affairs methods and assumptions that are appropriate only to the study of the (much simpler) phenomena comprising the domain of physical science.

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Thus, Hayek's account shows us that (and shows us why) where morality and practical affairs in general are concerned, it is precisely respect for tradition and common sense that is rational, and the hostility to these things exhibited by so-called Enlightened rationalists that is irrational. For just as the socialist economic planner cannot possibly accumulate the knowledge embodied in market-determined prices—such that would-be planners in Eastern bloc countries typically had to rely on information about prices in the capitalist West in order to set their own prices[24]—so, too, the anti-traditionalist advocate of the construction of an allegedly more rational "new morality" cannot possibly have the knowledge of the intricate facts about human nature and the social environment that would be required for such a task, knowledge which is embodied in traditional morality itself. This is why, as with the socialist planner, the anti-traditionalist ends up with something that is little more than a distorted, less effective version of what he claims to be replacing (e.g., ham-fisted and oppressive sexual harassment legislation in place of the subtle norms of etiquette entailed by the ideal of "behaving like a gentleman"); and also why, as we've noted already, rationalism so often leads to irrationalism when the rationalist comes to realize that his moral system is actually no better founded (indeed, as we've seen but as the rationalist typically refuses to admit, it is *far less* well-founded) than that of the traditionalists he ridicules.

The antidote to this rationalist-cum-irrationalist attitude is the nurturing of another, very different attitude long recommended by tradition and common sense, namely, simple *humility*. The modern progressive sophisticate concludes from his failure to find a reason for a traditional institution (after a typically superficial examination) that there *is* no reason. He ought instead to consider that, given the longevity and complexity of such institutions, the reason *may* just be too complicated for his (or anyone else's) limited and untutored intelligence to grasp quickly and easily.

Hayek and His Critics

Such, then, is Hayek's defense of tradition by means of a theory of cultural evolution. Now Hayek has had his critics, and it is to them that I want to turn next. But let us take note first of how radical are the consequences of the very *existence* of Hayek's position—of how the

[24]See, e.g., David Ramsay Steele, *From Marx to Mises* (La Salle, Ill.: Open Court, 1992).

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bare presentation of that position ought for most modern educated people, if they are intellectually honest, to stand as a serious challenge to much of what they believe. For to the extent that the attitude of contempt for traditional beliefs, of treating them as "guilty until proven innocent" (indeed, as "guilty" full stop) is simply assumed without argument by anti-traditionalists to be the hallmark of rationality, the mere existence of Hayek's argument shows that such an assumption is unwarranted. That assumption must itself be defended—not regarded as uncontroversial or obvious, much less held smugly as a kind of pose. And it must be defended as at best *merely one view among others*, the way all other views are to be defended, according to the modern rationalist attitude.

That traditionalists are held in such contempt in the modern university, and their views generally excluded from consideration, must accordingly finally be acknowledged as the intellectual scandal it is. The very fact of a traditionalist school of thought extending from Hayek back at least to Burke and Hume, ought *by the rationalist's own lights* to be reason for regarding traditional beliefs as among the chief intellectual options available. (After all, modern progressive rationalists have allowed all sorts of people hostile to them a place at the table —Freudians, Nietzscheans, postmodernists, and the innumerable representatives of exotic feminist, "post-colonial," and "queer" theories. Why are traditionalists alone left uninvited? Or, again, is it less the love of reason than the hatred of tradition which motivates the rationalist in the first place?)

Let us note secondly that there can be no doubt that there is at least *something* right in the Hayekian view. For surely, the very mechanism of natural selection cannot fail to operate to *some* degree on cultural practices, as on biological traits, so that the attitude that its being traditional by itself provides absolutely *no* evidence in favor of the value of a practice must itself be dismissed as unreasonable.[25] Even some writers of a decidedly non-conservative bent implicitly

[25]Nor ought my claim here be questioned on the grounds that it simply assumes the truth of the entire Darwinian evolutionary picture, for it does not. Even creationists generally grant that natural selection is real, and deny only that it can account for changes *between* species, while allowing that it operates *within* species to produce different breeds and sub-species (i.e. they admit "micro-evolution" but not "macro-evolution"). This very general claim that it is unreasonable to doubt the existence of natural selection of *some* sort is all I'm assuming here.

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grant the intuitive plausibility of this Hayekian insight. Moral philosopher James Rachels, for instance, argues (contra relativism) that there must be at least some universal moral values, for the simple reason that any society that abandoned basic moral rules like those against murder and lying *couldn't survive*.[26]

Cultural Evolution and Biological Evolution

Many criticisms of Hayek's position founder, I believe, because they fail to take note of such parallels between cultural evolution and biological evolution, and in particular of the way in which the operation of natural selection in the former case is no less plausible than it is in the latter. Roland Kley objects that Hayek fails to give "guidance as to *which* of all those evolved rules, institutions, and so forth do store the tacit social wisdom that [he] is so anxious to safeguard,"[27] and dismisses as implausible Hayek's apparent reply to this objection "that *all* rules and institutions not set up intentionally to serve some specific purpose are evolutionary creations and must, therefore, be presumed to contain such wisdom."[28]

But would Kley similarly dismiss as implausible the familiar claim that all *physical* and *behavioral* traits of organisms can be presumed (defeasibly) to be the reproductive-advantage-conferring products of *biological* evolution? Presumably not—even though biologists hardly know the function of all traits of organisms, and even though some suggested functional explanations in biology are tendentious at best. And rightly so, for given that the *general idea* of natural selection as preserving adaptive features has such a high intrinsic plausibility, and also that in the nature of the case, we shouldn't expect to be able easily or fully to understand every single biological or behavioral trait, the lack of explicit explanations for each and every such trait is hardly fatal for biological evolutionary theory. There is still a presumption, however defeasible, in favor of any particular trait having an adaptive function, or being linked to a trait that does have such a function. But the intrinsic plausibility of the general idea and the lack of a reasonable expectation that we should be able to know just everything hold also in

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[26]James Rachels, *The Elements of Moral Philosophy*, 2nd ed. (New York: McGraw-Hill, 1993), pp. 25–26.

[27]Kley, *Hayek's Social and Political Thought*, p. 165. See also O'Hear, *Beyond Evolution*, p. 149.

[28]Kley, *Hayek's Social and Political Thought*, p. 166.

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the case of Hayekian cultural evolution, so why shouldn't *its* products also get the same presumption of adaptive function?

Of course, there is no *genetic* component to cultural evolution, and thus no way in which a non-adaptive traditional rule might be linked *genetically* to one that is adaptive. Still, the analogy between biological and cultural evolution doesn't quite break down even here. For other, non-genetic links are possible in the case of social rules—*sociological* and *psychological* links, or even *logical* ones. These links may allow us to explain the utility of rules that are not themselves directly adaptive, but are nevertheless tied inexorably to rules that are.

For example, many defenders of traditional sexual morality have argued that this is at least part of the reason for the existence of the taboo against homosexuality. Approval of homosexual behavior might not seem *directly* to threaten the stability of the family, which, after all, essentially requires lifelong mutual fidelity between *heterosexual* partners. Nevertheless, it arguably threatens it *indirectly*. For given that homosexual behavior is, by its nature, divorced from procreation, and given also that in males, at least, homosexuality is often associated with extreme promiscuity, approval of homosexuality cannot fail to entail, at least psychologically and (therefore) sociologically, approval of the notion that "recreational" sex, utterly divorced from a general context of commitment to family and children, is, in principle, morally legitimate.

And if people take it to be morally legitimate in one context, they will, eventually and naturally, begin to regard it as legitimate in general. That is, the casual attitude toward sex that exists among homosexuals will, if homosexuality is approved of in society at large, inevitably spill over into heterosexual life, with the result that the male libido will tend to become unchained from the responsibilities of marriage, with all the bad social consequences that that has had.[29] The taboo against homosexuality, then, even if it is not directly adaptive, is nevertheless indirectly adaptive, since it is sociologically linked to a rule—viz., confining sexual behavior to a context of commitment to spouse and children (that is, to marriage)—that is directly adaptive.[30]

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[29]See, e.g., Dennis Prager, "Homosexuality, the Bible, and Us: A Jewish Perspective," *The Public Interest* (Summer 1993), pp. 60–83; and Roger Scruton, "Sexual Morality and the Liberal Consensus," in *Philosopher on Dover Beach: Essays* (South Bend, Ind.: St. Augustine's Press, 1998).

[30]This is not to say that the taboo against homosexuality *isn't* directly adaptive, only that even *if* it isn't, it doesn't follow that it isn't adaptive *at all*. And if one accepts Thomistic natural law arguments or sociobiological arguments

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Whether the link between the taboo against sex outside of marriage and the taboo against homosexuality is logical or merely psychological/sociological depends on how the rules expressing those taboos are formulated. If the rule necessary to guarantee the stability of the family is (à la Thomistic natural law theory) "Never engage in sexual activity that isn't inherently procreative," then the rule against homosexuality logically follows. If, instead, it is only "Heterosexuals shouldn't engage in sexual activity that isn't inherently procreative," then there is no logical inconsistency between such a rule and approval of homosexual behavior, but it would obviously be very difficult *psychologically* for most people to accept this rule and still tolerate homosexuality. People would tend inevitably to think either "*We* can't do that sort of thing, so why should they?" or "*They* can do it, so we should too!" Something would have to give, and given generally greater male promiscuity, it would inevitably be the taboo against heterosexual sex that wasn't inherently procreative that would be abandoned, rather than toleration of homosexuality.[31]

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to the effect that a homosexual orientation is intrinsically dysfunctional and harmful (psychologically and morally) to the one who possesses it, one has grounds for claiming that the taboo against homosexuality *is* directly adaptive.

For the Thomistic argument, see, e.g., John Finnis, "Law, Morality, and 'Sexual Orientation'," *Notre Dame Law Review* 69 (1994); and Robert P. George, *The Clash of Orthodoxies* (Wilmington, Del.: ISI Books, 2001), chap. 13. For the sociobiological arguments, see, e.g,. Michael Levin "Why Homosexuality is Abnormal," *The Monist* 67, no. 2 (1984), pp. 251–83; and Thomas and Levin, *Sexual Orientatin and Human Rights*.

If Levin is right, it is also directly adaptive even for *non*-homosexuals in a biological evolutionary sense, not just a cultural evolutionary sense, for it pays, biologically speaking, for an organism to find homosexuality revolting in that such a reaction makes one less likely to engage in such reproductively futile behavior.

[31]Hence the error of David Ramsay Steele's glib assumption, in "Hayek's Theory of Cultural Group Selection," *Journal of Libertarian Studies* 8, no. 2 (1987), pp. 180–81, that "there is no reason to suppose that if the system of morals has been arrived at by a form of natural selection, intellectual consistency will be of any consequence." For, as we've seen, such a system is not static, but evolves internally even as it competes with other systems via cultural evolution. Even though an inconsistent system might be more adaptive than *some* other systems, it doesn't follow that it will be more adaptive than *all* systems it might eventually encounter, or that it will *stay* adaptive (rather than gradually decay from within) if it fails internally to develop in such a way that its strengths are enhanced and its weaknesses purged. Human beings

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While recognizing the absurdity of defending a rule that applied only to heterosexuals, most people would nevertheless likely prefer a rule like "Never engage in sexual behavior outside of marriage" as the one crucial to the stability of the family. Some of them would then go on to argue that *this* rule *is* consistent with approval of homosexuality, at least if "homosexual marriage" is allowed and insisted upon. But while the first step in this strategy is at least defensible, the second one is implausible, for it assumes that the homosexual impulse is as compatible with the commitment to lifelong monogamy and the sacrifice of one's interests for the sake of children (and for the sake of the marriage itself, for that matter, as an institution vastly more significant than one's own individual short-sighted desires) as heterosexuality is.

But given the inherently non-procreative nature of homosexual coupling, and the often intensely promiscuous nature of the homosexual life, at least among males, this assumption is hardly believable, however much some activists might wish to believe it (or at least wish that others believe it).[32] (The occasional exception to this general rule—the homebody-ish homosexual couple down the street with the adopted child, etc.—does nothing to undermine the truth of the generalization.) Outright approval and legitimating of homosexuality (as opposed to mere toleration of things done in, and kept, private) is simply incompatible with a *serious* respect for the sanctity of marriage (as opposed to paying sentimental lip service to the remnants of an institution already seriously degraded by the widespread practice of divorce and fornication). The taboo against homosexuality and the taboo against

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are by no means always rational, but they will at least often react negatively to perceived inconsistencies, and reject a system in which they perceive them. Thus, other things being equal, a system that gradually becomes more internally consistent will be more likely to hold people's allegiance and remain adaptive than one that doesn't.

[32]Significantly, the taboo against lesbianism—which appears to involve *less* promiscuity even than female heterosexuality (no doubt reflecting an exaggeration of natural greater female monogamy just as male homosexuality reflects an exaggerated male promiscuity)—seems always to have been less strong than that against male homosexuality, probably precisely because of the lesser degree of promiscuity involved. The taboo does exist, however, no doubt in part because of the logical, or at least psychological/sociological, inconsistency between approving of lesbianism but not of male homosexuality. Just as the taboo against homosexuality indirectly supports heterosexual marriage, the taboo against lesbianism supports the taboo against male homosexuality.

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sex outside of marriage thus seem to form a systematic whole in which none of the parts can fully perform their social function without the others being in place.

Of course, all of this is controversial, and calls for a full-length discussion all its own. The point for our purposes, though, is that it provides at least a *prima facie plausible* explanation of the function served by certain long-standing social rules, and their essential connection to other, even deeper rooted and less controversial social rules. In biological evolution, the defeasible presumption in favor of a trait's serving some function or other, coupled with at least a plausible suggestion of what the function actually is, surely serves as a powerful prima facie argument against anyone who wants to insist that the trait is purely vestigial, devoid of function. Why, then, assume things are any different with cultural evolution? If we've got a general presumption in favor of a social rule's serving a function, together with a reasonable suggestion of what that function might be, why on earth should we be expected automatically to side with the innovator who suggests scrapping the rule? Surely it is rule *conservation* which has the default position, with the conservative getting the benefit of the doubt until such time as the *innovator* proves that the rule ought to be abandoned.

INCOHERENCE?

Doing this is indeed a tall order, since it is hardly possible to *prove* that a rule has no function. The only recourse left open to the innovator, then—certainly the only one that Hayek countenances—is to prove that the rule he dislikes is inconsistent with some more well-established rule within the tradition.[33] This is where what I've called

[33]This is the only recourse, at least, if the overall tradition in which he finds himself is to remain healthy. For suppose he proves unable to demonstrate an inconsistency, and thus unable to overcome the presumption that the hated rule really is vital to the tradition, and nevertheless *still* insists on rejecting the rule in question. If enough people follow him in this rejection, then either the overall tradition will now become *incoherent*, threatening its stability and people's attachment to it, or these people will, as a result of their rejection and to preserve consistency, end up rejecting the *older and more established* rules, thus in effect beginning a *new and distinct* tradition. Either way, the older tradition will be swept aside.

That the latter possibility *is* a possibility might seem to undermine the claim that one ought to adhere to the older and more established rules—for what if they are, in fact, less adaptive than some other unforeseen set? This

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internal evolution by extrapolation and refinement (as opposed to external, cultural evolution by natural selection) comes into play. That Kley fails to note this distinction between two processes of evolution in Hayek's thought leads him to make another misguided criticism, accusing Hayek of inconsistency in advocating both a conservative "reverence for the traditional" and an "institutional reformism" open to the alteration of long-standing rules.[34] But there is no inconsistency, and Kley is making a category mistake. Hayek's "reverence for the traditional" is just his presumption in favor of preserving any system of rules that has out-competed *external* rival systems—preserving it, that is, *as a systematic whole*. This is fully compatible with advocating institutional reform *within* the system that involves making the body of rules more coherent while preserving their overall character. If the would-be innovator can show from within the system that a rule is inconsistent with other rules, then he has carried out a legitimate and rational piece of refinement of the system, "evolving" it in the sense of bringing out its natural consequences. If he cannot do this, however, then given that there is a defeasible but undefeated presumption in favor of the rule's serving some function, and that the overall system whose functionality it presumptively serves has survived *another* kind of evolutionary process, viz., the process of cultural evolutionary competition with external traditions, it would be illegitimate and irrational to continue challenging the rule.

With this in mind, a related objection can also be shown to be without foundation. Kley implies that Hayek's position is made vulnerable by the tension that arguably exists between the free-market-enabling rules of private property, contract, and tort on the one hand and the family and religion on the other.[35] Along the same lines, Anthony O'Hear

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possibility is suggested in O'Hear, *Beyond Evolution*, p. 150. The problem with this is that *from the point of view of the rules of the original tradition*, which are, after all, the only rules that anyone within that tradition has to go on, *there can be no justification for making such an assumption*, precisely because those original rules are, so far as anyone can know, the best ones on offer. *If,* in fact, rejecting these rules would lead to something better, we can never *know* that it would—the attempt would be little more than an enormous social "crap shoot," and a happy outcome would be the result of the most amazing good luck. There can be no rational grounds for making such an attempt, though, and the rational presumption is, for the reasons we've seen, against its success.

[34]Kley, *Hayek's Social and Political Thought*, p. 169.

[35]Kley, *Hayek's Social and Political Thought*, pp. 171–72.

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raises as a difficulty for Hayek the incompatibility between capitalism and mass democracy noted by Tocqueville.[36] But there is nothing in Hayek's account that entails that a tradition ought at every moment of its existence to be fully coherent, any more than an organism must at every moment of its existence possess its mature traits. It entails only that, if a tradition is to remain adaptive and competitive, its *internal* evolution must progressively weed out any elements that are inconsistent with the rules most plausibly responsible for the tradition's success thus far, just as an organism, to remain adaptive and competitive, must shed its immature features and take on its natural adult ones.

Since property, contract, and the like are essential to the prosperity of capitalist society, elements of existing capitalist societies that are in tension with those features, such as the interventionism and redistributive welfarism of mass democracy, must be eliminated if capitalist societies are to remain healthy. And if the family and religion are *also* essential to the health of those societies, there must be some way of reconciling them with the first features if those societies are to survive. And indeed there is such a way—by understanding liberty as freedom from *state-imposed* restraints enacted through force of law, but not as freedom from *moral* restraints enforced informally through the power of taboo and shame.

Far from posing a problem for Hayek's position, the tensions (or alleged tensions) that Kley and O'Hear cite instead provide clues as to how we might rationally refine the rules governing our society to make them more consistent and efficient—rules we could never have created as a systematic whole (only cultural evolution could do that), but which, once they exist and their overall function becomes evident, we can tinker with around the edges (as a matter of *internal* evolution).

Redundancy?

The possibility of such rational refinement, presupposing as it does an understanding of the functions served by traditional institutions, might seem to make Hayek's defense of tradition redundant. If we can explain what function is served by a particular institution, it might be asked, what is the point of appealing also to tradition in its defense? What does noting the fact of its long survival add? Why not just explain the function and be done with it? But to ask such questions is to

[36]O'Hear, *Beyond Evolution*, p. 150.

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mistake a mere *illustration* of Hayek's theory for the whole of it. With private property, contract, the family, etc., we have *clear examples* of how cultural evolution preserves adaptive practices, and the point of Hayek's theory is to suggest that this gives us reason to be cautious about tampering with practices whose function is *less* clear.

That it gives us such reason is made more evident when we keep in mind that the function of even the practices mentioned was not *always* so clear. David Ramsay Steele objects to Hayek's account that Aristotle, Cicero, and other thinkers noted the beneficial functions of private property long before cultural evolution purportedly gave rise to the modern market economy, thus (allegedly) rendering appeal to such evolution otiose.[37] But surely it is not insignificant—and is indeed part of Hayek's point—that such thinkers did *not* understand the benefits of the *particular form* the institution of private property eventually took (i.e., roughly classical liberal) that made possible the market order, benefits that we fully grasp only in hindsight. Moreover, to the extent they saw the benefits they did, this was itself surely not something arrived at a priori, but followed their observation of a pre-existing evolving practice that had not come into being as a result of some previous philosopher's theorizing.

Furthermore, that the rare genius can see the benefits a certain institution might have is not necessarily sufficient for that institution to come into being, for the great mass of people might still be unable to see those benefits or to understand the arguments that reveal them. In this case, a beneficial institution might come into being and survive in a society only if *most* of that society's population adopts it for reasons (religious, say) that have little to do with its utility.

Noting the longevity of an institution adds to the purely utilitarian case to be made for it in that it gives reason to believe that the institution reflects something deep in human nature, and thus might not be easily replaced by some other, novel institution that might seem in the short term to perform the same functions and have equally strong pragmatic arguments in its favor. Between two courses of action which otherwise are on a par as far as their rational justification is concerned, the one which is *also* sanctioned by tradition is, for that reason, to be preferred.

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[37]Steele, "Hayek's Theory of Cultural Group Selection," pp. 190–91.

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FATALISM?

Another natural objection raised against Hayek is that his position must necessarily be fatalistic—that, as David Miller has argued, respect for the results of cultural evolution must entail that "the best advice we can give is to wait and see" rather than actively try to promote any particular policy, even the sort of policy Hayek himself would favor.[38] For if socialism, say, really is a dysfunctional system, then it will fall of its own accord, and if capitalism is superior to it, then its victory is inevitable, so no action is necessary. Indeed, action is inadvisable, for if we interfere, we can never be sure that the best system, the one that would have prevailed in the cultural evolutionary contest if left to itself, really has won.

But we can see the error in this objection by keeping in mind the parallels between biological and cultural evolution. Begin by considering the fact that I hardly need to wait for further biological-evolutionary history to take place before I can judge, say, that if I take a population of squirrels down to Antarctica, they are unlikely to survive, even with plentiful fish and penguins for them to eat. I don't know this merely from examining their physical appearance, of course, nor could I have designed and created the group of squirrels myself from scratch in a laboratory; they could only have been produced by the complex and blind process of biological evolution that did produce them, and only by knowing something about that process, and about the environments in which squirrels evolved and typically live, can I justifiably infer anything about the likely prospects of an Antarctic squirrel colony.

Similarly, at the level of the individual squirrel, I can't know just from looking at a baby squirrel for the first time what exactly it needs in order to grow to normal maturity; but from having some general knowledge of how squirrels develop, I can reasonably infer that a squirrel kept in a cage from the time of its birth onward, and fed nothing but crackers and toothpaste, is very unlikely to develop in a normal way and to the peak of its potentials, even if it survives. So, whether we're considering a group of squirrels as a product of an evolutionary process of competition with external rivals, or an individual squirrel as developing via a process of internal evolution, while it is true that we cannot have designed such animals from scratch, cannot deduce a priori the conditions under which they survive and flourish, and thus cannot know except by sitting back and observing exactly what would

[38]David Miller, "The Fatalistic Conceit," *Critical Review* 3, no. 2 (1989), p. 314.

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be best for them, we nevertheless *can*, having *done* the observation, draw reasonable conclusions and promote certain courses of action on their basis. For instance, we can reasonably insist that moving squirrels to Antarctica or keeping them in cages for their entire lives is not advisable if what we're interested in is producing a population of normal, healthy squirrels.

This parallels our situation with respect to traditions that have resulted from a process of cultural evolution. The Hayekian facts that such traditions could not have been designed from scratch in an a priori fashion, that accordingly we cannot know in detail before the fact what effects their adoption will have, and that they must therefore survive a process of cultural evolution before we can have an inkling of the functions they serve, do not entail that we can have no basis for trying to shore up a tradition or oppose its rivals. For we are not like someone in a position of trying to determine what squirrels will be like and what needs they'll have before such creatures have even come into existence. We are rather like the person who can observe actual living squirrels as they've existed for millions of years, and so has grounds for making judgments about what functions their various biological traits serve, and what bad effects will follow from various courses of action taken toward them. With existing long-standing traditions, we are dealing with systems the functionality of whose elements is now, *after* the fact, largely deducible, so that we can have good reason for concluding that alterations to them will have bad effects. When comparing squirrels and, say, penguins in an Antarctic environment, we can with justification conclude that the latter species is better adapted; so too, when comparing socialism and capitalism, we have reason, given our knowledge of the functions served by capitalist institutions, for concluding that the latter of *these* systems is more adaptive. And as when determining, on the basis of our knowledge of a squirrel's nature, what is a part of the natural maturation process of a squirrel and what is an aberration, similarly, our knowledge of the fundamental elements of a tradition gives us a basis for judging which internal developments within it are natural and salutary refinements of its essential nature and which are dangerous deviations from it.[39]

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[39]Along these lines, Hayek's *The Road to Serfdom* (Chicago: University of Chicago Press, 1944) can be read as an analysis of what the deviation from the rules underlying capitalist society will lead to—or, alternatively, as an analysis of what the *consistent internal evolution* of the rules of a *socialist* society would lead to.

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Thus, there is no "fatalism" inherent in Hayek's position. Fate may have determined which traditions happen to exist now, and what their relative standings are—which ones are widespread, growing, and prosperous, which ones are isolated and shrinking, which ones are somewhere in between. But given this status quo and what we can deduce from analysis of it, we are fully capable of taking action, of preserving those elements in a tradition we know to be conducive to human well-being, and resisting those elements we know to be detrimental.

We may well fail in this endeavor. There is nothing in Hayek's view that guarantees that even a well-adapted tradition will survive. Of course, its failure could happen as a result of external pressure, i.e., because it is confronted with an even more well-adapted tradition. But it could also happen as a result of internal decay, as a result of a lapse into incoherence as fundamental components of the tradition are stifled in their operation by the virus-like rise from within of contrary elements. In this case, our tradition may itself be swept away by the process of cultural evolution, like an organism or species that is ravaged by some disease and becomes unable to compete as well as it once did. Perhaps we would then leave behind as the *new* reigning traditions competitors that are less adaptive than our tradition was at its height, but are now nevertheless superior to it in its *decadent* state —like dinosaurs being supplanted by tiny mammals, or Romans by barbarian tribes.

Here again we see how conservative are the implications of Hayek's position. Change is sometimes good, but it is sometimes very bad indeed. If change is a natural consequence of the working out of the implications of a tradition's basic internal elements, it may be constructive, even necessary; if it involves instead a distortion or repudiation of those essentials, it can be expected to be catastrophic. Traditions, along with the cultures and civilizations they inform, can, like organisms and species, be born and grow—but can also decay and perish.

Cultural Evolution and Moral Theory

This discussion about traditions causing the groups that adopt them either to "survive" and "flourish" or to "decay" and "perish" naturally raises the question of what exactly we *mean* by these terms, of what *precisely* are the criteria of success or failure by which a tradition is to be judged from a Hayekian point of view. If a group literally and completely dies out as a result of adopting some dysfunctional tradition, that tradition can presumably without controversy be said to be deficient.

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But such utter annihilation is rare. More common is the situation in which various traditions exist that provide the groups following them some advantages and some disadvantages, with some groups having perhaps a greater preponderance of apparent advantages in its practices than others have, but all nevertheless persisting with *some* degree of success.[40] So how do we determine *exactly* which groups are more successful than others, and in what respects and to what degree? Precisely *which* surviving traditions, the critic of Hayek might inquire, are we supposed to follow?[41]

In response, let us note first that the differences between traditions can be, and very often are, overstated. To take the world religions as examples, while there are wide *theological* differences between them, the *moral* differences—the sort of differences we're primarily concerned with here—are not so stark. One finds standard Ten Commandments-type principles (minus the prohibitions of polytheism and idolatry)

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[40]This reflects the circumstance that, given the complexity of systems of cultural practices and the societies that exhibit them, as compared to single organisms, the selectional pressures involved in cultural evolution are inevitably going to be less strong and decisive than in the case of biological evolution. Note, however, that they are not always decisive in the latter case either. A species needn't be wiped out when a more adaptive competitor comes upon the scene, but merely relegated to a more limited niche—just as a society might, in competition with other societies, be driven even from a position of dominance to the status of being a cultural backwater.

Theories of group selection—of which Hayek's position is a type—are the subject of heated disputes in evolutionary biology precisely because the selectional pressures involved in group competition are so much more complex than those involved in competition between individuals. Still, there are certain phenomena—for instance, the courage and self-sacrifice shown by soldiers with regard to non-kin—that are hard to account for except in group selection terms. See Elliot Sober and David Sloan Wilson, *Unto Others: The Evolution and Psychology of Unselfish Behavior* (Cambridge, Mass.: Harvard University Press, 1998) for a defense of group selection models in biological evolution. Steele, in "Hayek's Theory of Cultural Group Selection," criticizes Hayek's position on the basis of difficulties with such models; Todd Zywicki, in "Was Hayek Right about Group Selection After All? Review Essay of *Unto Others: The Evolution and Psychology of Unselfish Behavior*, by Elliot Sober and David Sloan Wilson," *Review of Austrian Economics* 13, no. 1 (2000), pp. 81–95, appealing to the work of Sober and Wilson, defends Hayek against this sort of criticism.

[41]Jan Narveson raises this sort of question as a challenge to Hayekian traditionalism in "The Trouble With Tradition," *Liberty* (June 2001), pp. 45–49.

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in *all* of them. The sorts of rules which govern everyday moral life—prohibitions on disrespect for elders, murder, stealing, adultery, lying, and so forth—are virtually universal, and the differences between cultures and religions on this score are almost always differences in emphasis or interpretation of the rules rather than differences in rules themselves. (This universality itself strengthens the Hayekian case for such rules: any rules which are found almost *everywhere* and in *every age*—which includes not only the rules just mentioned, but also many of the rules of sexual morality so despised by many modern, yet historically speaking, highly eccentric and parochial, Westerners—have, given the mechanism of cultural evolution, a *very* strong presumption in their favor.) The question in most cases, then, is not so much *which* rules to follow, but which *construal* of those rules—which *interpretation* of respect for another's property, say, or of virtue in sexual behavior—is best.

The analogy with biological evolution also gives us some help here, for the sorts of traits favored by natural selection in general in the biological sphere surely are going to be favored by cultural evolution as well. Thus, any group is going to be favored whose traditional practices make it easier for it to produce food in ever-increasing abundance, to fight off attackers with ever-increasing deadliness and efficiency, and to maintain its members in ever-increasing health. It is no surprise, then, that Western civilization, with its tradition of individual liberty, with the economic freedom and scientific advance that that spawned, and with the wealth, technology, and medical know-how that *these* made possible, should have so thoroughly come to dominate the world. These social criteria of success are no less clear than the biological criteria—indeed, they are largely the same criteria—so the standards of success in cultural evolution are to a very great extent as clear as the standards appealed to by evolutionary biology.

They are not *entirely* as clear, however, given that in evaluating social practices, we cannot help but be interested in questions of *morality* in a way we are not so interested when evaluating the success of species of lower animals. Of course, Hayek's account is intended to tell us something about the *moral* superiority of more successful traditions; and it would, I think, be implausible in the extreme to take the view that "success" of the sort just described is *irrelevant* to morality. Anyone who held that the ability of a set of traditional practices to sustain human life at an increasing level of material well-being says *nothing* in favor of it must, I would say, be in the grip of some ideological delusion, if not madness.

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Still, it is hardly implausible to say that the promotion of material well-being is not *all* there is to morality. And even the more or less non-controversial claim that promoting such well-being is a good thing constitutes a value judgment: Nothing in the empirical facts described by Hayek *logically necessitates* that one prefer the institutions Hayek prefers. Someone *could* respond: "I agree that certain traditional practices do have all the consequences Hayek and other defenders of tradition say they do; I just don't care about those consequences." To this, Hayek's theory of cultural evolution seems to provide no rejoinder.

The problem, then, is that Hayek's position never really addresses the question of morality at the most fundamental level. It tells us a great deal, both in general, and with specificity at least where economic results are at issue, about what sorts of consequences can be expected to follow from what sets of traditional practices. But it does not tell us why we should care about those consequences in the first place, or how we should balance them against other consequences we might want to bring about.

Utilitarianism

Utilitarianism says that consequences are all that matter in any case, and Hayek is often interpreted as a kind of utilitarian.[42] There are difficulties with this interpretation, however. First of all, Hayek is not a utilitarian in any usual sense. He would clearly reject the notion that the individual ought to evaluate any *particular* act or moral rule by asking himself what consequences will result from it, and then follow it if the good consequences outweigh the bad ones. For Hayek puts great emphasis on the impossibility of our knowing all the detailed consequences of our actions[43]—hence, the impossibility of planning an economic or moral system. It is only systems of rules *as a whole* whose consequences can be known to be good, and only after they have existed for some time so that those consequences can be observed. Thus, if Hayek is a utilitarian, he is not an "act utilitarian" or "rule utilitarian" but what we might call a "tradition utilitarian."

But then, for practical purposes, he isn't much of a utilitarian at all, since considerations of utility can in his view never enter into our *everyday* moral decision-making process; on the contrary, Hayek's

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[42]See, e.g., Leland Yeager, "Reason and Cultural Evolution," *Critical Review* 3, no. 2 (1989), pp. 324–35.

[43]Hayek, *The Mirage of Social Justice,* p. 20.

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position is that individual traditional moral rules must, if they are as an aggregate to have their beneficial results, be followed in a manner the rationalist will tend to scorn as "blind obedience."[44] This stress on the absolute character of morality on the practical, day-to-day level dovetails with the Kantian element many commentators have perceived in Hayek's thought;[45] we might argue that Hayek advocates Kantian means toward utilitarian ends.

Even at the level of traditions as a whole, however, Hayek isn't a utilitarian in anything but the very loosest sense. All he implies is that *if* one favors survival, prosperity, etc., one ought to conserve the traditions of the free society. He does not say *why* one ought to favor them, much less endorse a general utilitarian theory of the content or justification of moral claims.

Aristotelian Virtue Ethics

Hayek's position, then, must be admitted to be incomplete. If we are to explain *why* one ought to endorse those traditions that are the most successful in the quasi-biological sense of promoting survival and prosperity, and also determine how to adjudicate between traditions when it is not clear that one is superior to the other(s) in these terms, we need a substantive moral theory. The theory that seems most appropriate to me, however, is not utilitarianism, but Aristotelian virtue ethics. Like utilitarianism, Aristotelianism takes the question of human happiness and well-being to be fundamental to morality, but it has a much richer conception of these notions. We must, says the Aristotelian, consider *habitual patterns* of action rather than isolated acts; we must consider how these patterns affect the course of an *entire lifetime*, not merely their short-term results; and we must consider in particular how conducive they are to the *fulfillment of capacities* that human beings have *by nature*. Moreover, we must always keep in mind that, morality being essentially a matter of habit rather than rational calculation, our conception of the moral life must never become over-intellectualized. "We enter the palace of reason through the courtyard of habit," Aristotle said; we can only master the moral virtues by practicing them, beginning by rote in childhood, with a theoretical understanding coming later, following on practice rather than

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[44]Hayek, *The Mirage of Social Justice*, p. 143.

[45]See, e.g., Gray, *Hayek on Liberty*; and Chandran Kukathas, *Hayek and Modern Liberalism* (Oxford: Clarendon, 1989).

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preceding it. This eminently reasonable but clearly anti-rationalistic conception of morality surely harmonizes well with a Hayekian conception of the limits of human reason. Indeed, Aristotle's position sounds a bit like "Hayek writ small," down to the level of the moral life of the individual.

An Aristotelian moral philosophy helps us to fill the gaps in Hayek's account, and to see precisely how it contributes to an overall understanding of our moral situation. And it provides us with a moral *motive* for following the advice given by a Hayekian analysis of moral traditions. For morality is grounded in human nature; hence, we must understand human nature if we are to understand what is morally required of us. But it can hardly be denied that practices and rules that constantly recur in human societies, and that are especially prevalent in societies that have a greater tendency to support their members at a high degree of material well-being, reflect some deep aspect of human nature. Only the most extreme relativist would deny that the prevalence in all societies of rules against incest, stealing, and murder is a consequence of innate human needs, but many non-relativists have denied a similar innateness to the need for, e.g., private property. A Hayekian analysis surely indicates that this denial is futile, that given human nature, a system of private property of some sort is unavoidable—for clearly, the degree of material prosperity of a society increases as the stability of private property within it increases. Aristotelians have always defended private property of some sort, but what a Hayekian analysis does is provide evidence for the institution of property reflecting something deep in human nature, and also for what specific regime of private property—a broadly libertarian one—is *most* in tune with the needs of human nature.

Aristotelian moral theory and Hayekian traditionalism naturally reinforce one another. The relationship does not lead us into a vicious circle so much as a virtuous zig-zag. Aristotelianism tells us that morality is what best promotes human happiness and well-being as defined by human nature. Aristotelians, in giving an account of human nature, have always relied, quite sensibly, on observation of actual human societies. But Hayek's account allows for a more penetrating analysis of what aspects of human societies really do reflect something essential to human nature: We must observe the consequences of various practices, not just here and now, but over the course of centuries and even millennia. Practices that have appeared over and over again in various societies which have tended to out-compete their rivals, and whose beneficial consequences we can therefore deduce or

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at least guess at, are very likely to reflect needs rooted in human nature; practices which are not widespread or long-lasting, or whose appearance tends to be followed by social decay and/or collapse in the societies which feature them, are likely to be out of harmony with the requirements of human nature. Furthermore, considerations drawn from what I've called the process of the "internal evolution" of a tradition provide us with a way of determining how a beneficial system of rules might be made even more efficient and coherent.

Armed with this Hayekian analysis, the Aristotelian can proceed to develop a detailed account of specific moral virtues, including their relationships to one another and their ranking in terms of relative importance. And on the basis of this account, together with a picture of his society's current moral and social situation, the Hayekian social theorist can proceed to make concrete projections and policy recommendations.

An Aristotelian moral theory, given its emphasis on a substantive and down-to-earth conception of human nature—as contrasted, say, with the rarefied, abstract conception associated with Kantian moral theory—also helps best make sense of the objectivity and empirical import of the results of Hayekian cultural evolutionary analysis. As noted earlier, some writers have put a relativistic spin on the defense of tradition associated with thinkers like Burke and Hayek. Jerry Z. Muller, for instance, distinguishes the mere "utility" of tradition that he says such theorists are exclusively concerned with from the "truth" of traditional beliefs insisted upon by religious and other representatives of what he calls "orthodoxy."[46] The conservative theorist, in Muller's view, takes a merely pragmatic attitude to the institutions he defends, and is thus constantly suspected by his more devout allies of a cynical disingenuousness.

But there is nothing essentially pragmatic or relativistic (much less cynical) about Hayek's position (or Burke's, for that matter), and Muller erroneously assimilates that position to the first of the three defenses of tradition I distinguished earlier (i.e., the "tradition for its own sake" defense). Hayek hardly can be said to believe that property rights, contract, the rule of law, and so forth can only have efficacy in *Western* societies, or have the value they do *merely* because they are customary and overthrowing them would make for social chaos. On the contrary,

[46]Jerry Z. Muller, "Dilemmas of Conservatism," *The Public Interest* (Spring 2000), pp. 50–64.

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these institutions have the "utility" they do precisely because they reflect such *objective and universal facts* about the human situation as the kinds of incentives people naturally tend to respond to, and the inherent limits on human knowledge of the circumstances relevant to rational economic calculation.

There is no more of a cleavage between utility and truth in Hayekian cultural evolution than there is in biological evolution. Wings evolved because it is an objective fact that they allow birds to fly and, thus, provide certain adaptive advantages—not because birds merely got used to them and giving them up would be disruptive, undermining the stability of ornithological society. Similarly, what survive the process of natural selection between systems of social rules are precisely those rules that best allow the groups following them to adapt to *objective* circumstances, including the circumstances of empirical human nature. There is no ethical theory as well equipped as that of the Aristotelian virtue ethicist systematically to articulate the details of this human nature and its implications for morality.

CONCLUSION

Fleshing out this suggested synthesis of Aristotle and Hayek is a task for another time.[47] But it provides the best means, in my view, for filling the one significant gap in Hayek's position, the lack of a satisfactory moral-theoretic foundation. Even as that position stands, however, it provides us with significant moral insight, for it tells us that fundamental moral and legal rules that have persisted within and formed the framework for a society that has out-competed its rivals have a presumption in their favor. It is those who want to reject those rules who have to meet a considerable burden of proof, not those who want to conserve them, and whatever change does occur must be that which merely extends and systematizes those rules. Practically, this entails that the fundamental rules that have guided the development of Western civilization—respect for private property, contract, the rule of law, family-centered sexual mores, and so forth—are those which anyone desirous of preserving the material well-being of modern society must rally behind. Insofar as the systematic and consistent working out of these rules entails a radical paring back of the powers of the state and

[47]O'Hear, in *Beyond Evolution*, also defends a kind of traditionalism informed by Aristotelian ethics. Unfortunately, he erroneously characterizes Hayek's defense of tradition as, unlike his own, hostile to *all* change.

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a restoration of traditional sexual morality, Hayek's position can be said to give powerful support to a libertarian conservatism in practical politics. And if I am right about the extent to which a Hayekian analysis presents us with insight into human nature and its moral implications, such a political position cannot fail to reflect truth as much as utility.

BIBLIOGRAPHY

Austin, J.L. *Philosophical Papers*. 3rd ed. Oxford: Clarendon Press, 1979.

Belloc, Hilaire. *The Great Heresies*. Rockford, Ill.: TAN Books, 1991.

Burke, Edmund. *Reflections on the Revolution in France*. London: J. Dodsley, 1791.

Chesterton, G.K. *Saint Thomas Aquinas*. Garden City, N.Y.: Doubleday, 1956.

Dawkins, Richard. *The Selfish Gene*. 2nd ed. Oxford: Oxford University Press, 1989.

Finnis, John. "Law, Morality, and 'Sexual Orientation'." *Notre Dame Law Review* 69 (1994).

Gamble, Andrew. *Hayek: The Iron Cage of Liberty*. Boulder, Colo.: Westview Press, 1996.

George, Robert P. *The Clash of Orthodoxies*. Wilmington, Del.: ISI Books, 2001.

Gray, John. *Hayek on Liberty*. 3rd ed. New York: Routledge, 1998.

Hayek, F.A. *The Constitution of Liberty*. Chicago: University of Chicago Press, 1960.

———. *The Fatal Conceit: The Errors of Socialism*. Chicago: University of Chicago Press, 1988.

———. "Individual and Collective Aims." In *On Toleration*, edited by Susan Mendus and David Edwards. Oxford: Clarendon Press, 1987.

———. *Individualism and Economic Order*. Chicago: University of Chicago Press, 1948.

———. *The Mirage of Social Justice*. Vol. 2 of *Law, Legislation, and Liberty*. Chicago: University of Chicago Press, 1976.

———. *New Studies in Philosophy, Politics, Economics, and the History of Ideas*. London: Routledge and Kegan Paul, 1978.

———. *The Political Order of a Free People*. Vol. 3 of *Law, Legislation, and Liberty*. Chicago: University of Chicago Press, 1979.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. *The Road to Serfdom*. Chicago: University of Chicago Press, 1944.

———. *Rules and Order*. Vol. 1 of *Law, Legislation, and Liberty*. Chicago: University of Chicago Press, 1973.

Kley, Roland. *Hayek's Social and Political Thought*. Oxford: Clarendon Press, 1994.

Kukathas, Chandran. *Hayek and Modern Liberalism*. Oxford: Clarendon, 1989.

Levin, Michael. "How Philosophical Errors Impede Freedom." *Journal of Libertarian Studies* 14, no. 1 (Winter 1998–99).

———. "Why Homosexuality is Abnormal." *The Monist* 67, no. 2 (1984).

MacIntyre, Alasdair. *After Virtue*. 2nd ed. Notre Dame, Ind.: University of Notre Dame Press, 1984.

———. *Whose Justice? Which Rationality?* Notre Dame, Ind.: University of Notre Dame Press, 1988.

Miller, David. "The Fatalistic Conceit." *Critical Review* 3, no. 2 (1989).

Mises, Ludwig von. *Socialism: An Economic and Sociological Analysis*. New Haven, Conn.: Yale University Press, 1951.

Muller, Jerry Z. *Conservatism: An Anthology of Social and Political Thought From David Hume to the Present*. Princeton, N.J.: Princeton University Press, 1997.

———. "Dilemmas of Conservatism." *The Public Interest* (Spring 2000).

Murray, Charles. *Losing Ground: American Social Policy 1950–1980*. 2nd ed. New York: Basic Books, 1994.

Narveson, Jan. "The Trouble With Tradition." *Liberty* (June 2001).

O'Hear, Anthony. *Beyond Evolution*. Oxford: Clarendon Press, 1997.

Postrel, Virginia. *The Future and Its Enemies*. New York: Free Press, 1998.

Prager, Dennis. "Homosexuality, the Bible, and Us: A Jewish Perspective." *The Public Interest* (Summer 1993).

Rachels, James. *The Elements of Moral Philosophy*. 2nd ed. New York: McGraw-Hill, 1993.

Scruton, Roger. *Philosopher on Dover Beach: Essays*. South Bend, Ind.: St. Augustine's Press, 1998.

———. *Sexual Desire: A Moral Philosophy of the Erotic*. New York: Free Press, 1984.

Sober, Elliot, and David Sloan Wilson. *Unto Others: The Evolution and Psychology of Unselfish Behavior*. Cambridge, Mass.: Harvard University Press, 1998.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Steele, David Ramsay. *From Marx to Mises*. La Salle, Ind.: Open Court, 1992.

———. "Hayek's Theory of Cultural Group Selection." *Journal of Libertarian Studies* 8, no. 2 (1987).

Stove, David. *The Plato Cult and Other Philosophical Follies*. Oxford: Basil Blackwell, 1991.

Thomas, Laurence M., and Michael E. Levin. *Sexual Orientation and Human Rights*. New York: Rowman and Littlefield, 1999.

Wright, Robert. *The Moral Animal: The New Science of Evolutionary Psychology*. New York: Vintage Books, 1994.

Yeager, Leland. "Reason and Cultural Evolution." *Critical Review* 3, no. 2 (1989).

Zywicki, Todd. "Was Hayek Right about Group Selection After All? Review Essay of *Unto Others: The Evolution and Psychology of Unselfish Behavior*, by Elliot Sober and David Sloan Wilson." *Review of Austrian Economics* 13, no. 1 (2000).

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FACTS AND COUNTERFACTUALS IN ECONOMIC LAW

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Ludwig von Mises emphasized that economics is the foremost political science of our age. As such, the clarification of the facts on which this science is built, and of the way political conclusions are based on them, is of the greatest practical importance.[1]

The same spirit of a practical-minded interest for the epistemology and methodology of economic science motivates the present paper. I will argue that the nature of human choice jeopardises the mainstream approach to analysing human action, and then show that the difficulties of analysing choice can be overcome once it is recognised that a whole class of economic laws are counterfactual laws. They concern the relationship between what human beings actually do (their behaviour, their thoughts) and what they could have done instead. These laws can be applied in counterfactual analyses of the real world, which consist in comparing observed human behaviour and its unrealised choice alternatives in various (e.g., quantitative) terms.[2]

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[1]See Ludwig von Mises, *Epistemological Problems of Economics*, 3rd ed. (Auburn, Ala.: Ludwig von Mises Institute, 2003), p. xvii; and Ludwig von Mises, *Human Action*, scholar's ed. (Auburn, Ala.: Ludwig von Mises Institute, 1998), pp. 6f.

[2]For a case study in the economics of profit, loss, and equilibrium, see Jörg Guido Hülsmann, "A Realist Approach to Equilibrium Analysis," *Quarterly Journal of Austrian Economics* 3, no. 4 (Winter 2000), where I defend the

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FACTS, LAWS, AND SCIENCE

Let us first make some general observations about common scientific ground, to put into perspective both the criticism of mainstream economics and our exposition of the nature of the laws of choice.

Carl Menger and Ludwig von Mises both rejected *methodological monism*, emphasising the need to take account of the special features of human action by a special method of economic enquiry. They insisted that economic science had a distinct logical and epistemological character. It was in this regard different from both history and the natural sciences.[3] But this does not mean that Austrian economists could not subscribe to some broadly conceived *scientific monism* that

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thesis that equilibrium analysis is the method of explaining observed success by contrasting it to counterfactual failure, and observed failure by contrasting it to counterfactual success.

[3]See Carl Menger, *Grundsätze der Volkswirtschaftslehre* (Vienna: Braumüller, 1871); Carl Menger, *Untersuchungen zur Methode der Socialwissenschaften und der politischen Oekonomie insbesondere* (Leipzig: Duncker & Humblot, 1883); Mises, *Epistemological Problems of Economics*; Ludwig von Mises, *Nationalökonomie* (Geneva: Union, 1940); Mises, *Human Action*; Ludwig von Mises, *Theory and History*, 3rd ed. (Auburn, Ala.: Ludwig von Mises Institute, 1985); and Ludwig von Mises, *The Ultimate Foundation of Economic Science* (Princeton, N.J.: Van Nostrand, 1962).

Of all of Mises's contributions, his methodological works are probably least understood and least appreciated, even by many Austrian economists. The *pars detruens* of these works addressed the two paradigms (and major variants thereof) that have dominated economic science almost from its very inception: historicism, which is based on the assumption that there are no laws of human action; and positivism, which claims that the observation-based methods of the natural sciences are suitable to uncover all laws in any field of knowledge.

More recently, Mises's point that human action cannot be modeled in the same way as physicists model the universe of dead matter has been reinforced. See Hans-Hermann Hoppe, *Kritik der kausalwissenschaftlichen Sozialforschung* (Opladen: Westdeutscher Verlag, 1982); Hans-Hermann Hoppe, *The Economics and Ethics of Private Property* (Boston: Kluwer, 1993), chap. 7; Hans-Hermann Hoppe, *Praxeology and Economic Science* (Auburn, Ala.: Mises Institute, 1995).

In the *pars construens* of his methodological work, Mises argued that economic science deals with *a priori* laws that cannot possibly be refuted or confirmed by observation-based methods. This article will lend additional support to this thesis.

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stresses common features of all sciences. Nothing in Menger's and Mises's writings contradicts scientific monism in the broad sense of a belief that all types of scientific enquiry seek to explain certain empirical facts, "empirical" meaning that these facts are ascertainable by human senses or human reason. In all sciences, to explain such a fact means to relate it (the *explicandum*) in a special way to another fact (the *explicans*). The special relationship that links the two facts and thereby puts us in a position to explain the one through the other is commonly called a "law."

Any relationship between facts is itself a fact, but only those relationships that we call laws transcend the individual case under consideration, which is why they are "special" relationships. For example, when applying the law of gravity to explain why an apple has just fallen from the tree to the ground, we do not have in mind a relationship that applies merely to this particular apple at this particular point of time and space. Rather, the law holds for all apples and for all other objects located on the surface of the earth; in fact, it holds for *any* two bodies, situated anywhere in the known universe. Any two bodies, by the mere virtue of their masses, attract one another.

By virtue of what is it that a law transcends the individual cases in which it applies? Let us consider again the law of gravity. This law is a relationship between *any* two masses, that is, its application is conditioned by the mere existence of two distinguishable masses. All things that have the *property* of having a mass are, therefore, subject to the law of gravity. And because this property of having a mass does not pertain merely to one unique thing in the universe, but to very many things, all these things are subject to the law of gravity. One can express the same state of affairs from a slightly different angle, by saying that it is the *nature* of masses to be subject to the law of gravity.

The same thing holds true, *mutatis mutandis*, for all laws. Each law is a relationship between certain properties of things (properties being distinguishable qualities of distinguishable things), and each law therefore applies wherever the properties that the law relates to one another are given. And again, in a slightly different expression: laws—that is, *all* laws, whether they refer to a physical, biological, social, or praxeological nature—are *essential relationships* between distinguishable facts. For any fact is subject to laws if, by its very *nature* (by its properties), it is related through the law to other facts.

The systematic search for facts and laws seems to characterise scientific endeavours in all fields of knowledge—it constitutes what we

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called above "scientific monism."[4] Science, at least as it is traditionally understood, seeks to uncover laws in the sense of such essential relationships between distinguishable facts. For the knowledge (scientia) of laws can be applied to a much larger class of phenomena than to the comparatively few facts of which the scientist has immediate personal experience. It is clear that, as soon as we leave the realm of laws and enter the realm of mere accidental relationships, no such generalised applications are possible without wreaking havoc. For example, while Mr Jones's house might have one bedroom that is 213.2 square feet large, it is not commendable to equip all bedrooms in the world as if they had that size, or to plan all houses in the world on the premise that they will have exactly one bedroom of that size. And although a power shortage in California might occur on the same day that Californian utilities are privatised, it is not commendable to delay any privatisation of utilities if power shortages are to be prevented. To sum up, one can establish virtually any number of *accidental* relationships, and some mystics and daydreamers actually rejoice in such "discoveries." But the purpose of science is a different one.

Let us emphasise that our "broad" vision of science involves a large notion of what an empirical fact is. Above we said that such facts are ascertainable by human senses or human reason, thus stressing that *not all* empirical facts are perceptible or ascertainable by the human senses. This is widely acknowledged in fields such as psychology and in other fields of enquiry based on psychological analysis. In neo-classical microeconomics, for example, the individual's degree

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[4]See, for example, Mises, *Epistemological Problems of Economics*, pp. 1ff.; Carl Hempel, *Aspects of Scientific Explanation and Other Essays in the Philosophy of Science* (New York: Free Press, 1965), pp. 331ff.; Karl Popper, "Die Zielsetzung der Erfahrungswissenschaft," in *Theorie und Realität—Ausgewählte Aufsätze zur Wissenschaftslehre der Sozialwissenschaften*, ed. H. Albert (Tübingen: Mohr, 1964), pp. 73–86; Karl Popper, "Falsifizierbarket, zwei Bedeutungen von," in *Handlexikon zur Wissenschaftstheorie*, ed. H. Seiffert and G. Radnitzky (München: Ehrenwirt, 1989), pp. 82–86; Gerard Radnitzky, "Explikation," in *Handlexikon zur Wissenschaftstheorie*, pp. 73-80; and Jean Largeault, *Introduction à la philosophie réaliste* (Paris, 1985), pp. 18f.

We can neglect at this point the question of how laws in general relate to reality, that is, whether they exist independent of experienced reality (platonic laws *ante rem*), in reality (realist laws *in re*), or have no existence at all, but are mere names to summarise our hypotheses about certain relationships (nominal laws *post rem*). In any event, we shall see that counterfactual economic laws are laws *in re*.

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of satisfaction is one of the constitutive elements of the theory of prices.

It will be crucial for our argument that there are different types of empirical facts. However, there is no need for us to venture toward some sophisticated ontology of facts since, for our purposes, it suffices to identify and distinguish between four types of facts.

First, there are facts that we can ascertain by our senses. These facts are invariably extended in time (they are "events") for otherwise we could not perceive them through our ears, eyes, and other senses. Examples are horses, colours, houses, cheese, melodies, clouds, the smell of vinegar, the taste of red vine, etc.

Second, there are facts that we ascertain through our feelings and psychological introspection. These facts are also extended in time ("events") and differ from those of the first type only in that they are not experienced through our sense organs, but by means of "interior" perception. Examples are feelings of joy, pain, sorrow, excitement, thought processes, dreams, intentions, etc.

Third, there are facts that we ascertain through an exercise of our unaided reason and that, although the process through which we come to know them takes time, are not themselves extended in time. Examples are circles, rectangles, and points, but also, as we shall see, human choice and its manifold aspects and modifications like ends, means, success, error, bankruptcy, value, etc.

Fourth, there are laws that we ascertain through an exercise of our unaided reason and that, although the process through which we come to know them takes time, are not themselves extended in time. Examples are the geometrical relationships described by the Pythagorean Theorem or by the number π, and also, as we shall see, various relationships of human action.

Choice

In the light of these preliminary observations, let us now turn to the fundamental fact and object of the social sciences, namely, human choice. Most difficulties in the theoretical social sciences stem from the problems raised in analysing human decision-making, and the very same difficulties oppose attempts at methodological clarification.

The very first thing to emphasise about choice is that it exists; it *is* a fact. Human beings do choose, and the capacity to make choices

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is an essential feature of human nature. This fundamental point must be stressed at the outset since it makes no sense to discuss the implications of a fact if one does not agree on this fact itself.[5]

Choice always manifests some engagement of our human faculties. It always establishes a fact extended in time. In particular, we choose to think about something or another, thus manifesting our choice in the way we engage our intellectual faculties; or we choose to behave in a certain way, thus manifesting our choice in the way we use our body. There seems to be nothing unusual about choice, then, as far as the factual analysis of its manifestations is concerned. The observable movements of the human body through time and space seem to be amenable to the same type of explanation given in all other sciences, in which the observed fact is referred back to (determined by) some other observed fact. But if we take a closer look at human choice, we discover that it is impossible to fully explain it in terms of other observed events, and moreover that this impossibility stems from the very nature of choice. The fundamental truth about choice is that it is impossible to explain it as *exclusively* related to simultaneous, previous, or subsequent events X, Y, and Z.

Suppose that in our analysis of human action, we are able to give a complete enumeration of all the conditions under which human action takes place, and this for every single action. Then we would still not be able to formulate a law according to which any observed behaviour results from one of these conditions, or from a combination thereof. The reason is the existence of choice. A man who finds himself twice

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[5]Antony Flew, in *Equality in Liberty and Justice* (New Brunswick, N.J.: Transaction, 2001), p. 11, writes: "we have the most direct and the most expugnable certain experience . . . of being, on some occasions, able to do other than we do do." See also Antony Flew, *Thinking About Social Thinking*, 2nd ed. (Amherst, N.Y.: Prometheus, 1995), pp. 122ff., where he speaks of the "inescapable reality of choice."

In traditional philosophy, the same phenomenon has often been dealt with under the heading of "will" or "free will." Consider this passage from John Locke: "This at least I think evident, that we find in ourselves a power to begin or forbear, continue or end, several actions of our minds and motions of our bodies, barely by a thought or preference of the mind ordering, or, as it were, commanding the doing or not doing such or such a particular action. This power . . . is that which we call 'volition' or 'willing.'" John Locke, *An Essay Concerning Human Understanding* (Amherst, N.Y.: Prometheus, 1995), pp. 165f.

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in exactly the same situation might choose to do X the first time and Y the second time. There is no law that can fully explain his choice in terms of the mere circumstances of his action. (Notice that this problem is more fundamental than the difficulty of setting up laboratory experiments to study human behaviour. Even if we could create adequate laboratory conditions to control for the innumerable circumstances of action, we could not control choice. And, as a consequence, the experiment could not help us to determine the impact of any condition on human behaviour.)

The simple fact is that choice is an essential element of human behaviour, and that choice is not itself determined by factors outside of human action. Human action is, therefore, to some extent self-determined, so it cannot be fully explained by those other factors. There is a hard core of liberty in human action that operates even in the lives of paupers, which, as far as material conditions are concerned, are highly determined by their "milieu."[6] Of course, the lives of rich people are also constrained, though within larger margins. Choice is always constrained, to the point that the acting person could be said to merely choose the constraints circumscribing its future actions. Yet, none of this has any effect on the essence of choice. Irrespective of how small the scope for choice is, within this scope, choice is to some extent undetermined and undeterminable; here, the human being is self-determining.

To sum up, because of the existence of choice, it is impossible to give a full explanation of human behaviour in the mere light of any other event, or a combination of other events. There are to be sure boundaries of choice and, thus, there are also laws concerning the impact of these boundaries on choice. But choice itself, whatever its

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[6]On the far-reaching implications of this fact for social analysis see, for example, Max Weber, *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen: Mohr, 1988); Wilhelm Dilthey, *Einleitung in die Geisteswissenschaft*, Tübingen: Mohr, 1922); Heinrich Rickert, *Science and History: A Critique of Positivist Epistemology* (Princeton, N.J.: Van Nostrand, 1962); Mises, *Theory and History*; P.L. Gardiner, *The Nature of Historical Explanation* (London: Oxford University Press, 1952); and W. Dray, *Laws and Explanation in History* (London: Oxford University Press, 1957). These authors argue that there are no laws of particular action courses, so the application of positivist methodologies is impossible in applied social research. However, Mises alone among these authors was aware that there are, nevertheless, laws of human action.

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boundaries are, is to some extent not bound, but a free and therefore a literally "absolute" establishment of a fact. Human behaviour cannot be fully explained by reference to events and other things outside of the action under consideration. This impossibility concerns both causal and functional relationships.

PAN-PHYSICALISM

Let us briefly examine some of the epistemological implications of this first analysis of choice. A first implication is that there can be no science of human action that is modeled after physics—"pan-physicalism" is a dead end in social research. Physicists seek to establish laws of material nature, that is, essential relationships between objects existing in time and space. Their research is based on the assumption that it is possible to give an exhaustive account of these relationships. They do not believe that the objects of their research make choices ("animism"). Rather, they believe precisely the opposite: these objects do *not* make choices, so their movements through time and space are fully determined by the essential relationships in which they stand with other objects.

Let us notice that physicists do not have first-hand knowledge of these essential relationships or laws. Rather, they *postulate* the existence of some imagined law as a working hypothesis, which then guides and systematises their further observations. Only *ex post*, that is, only after a certain number of observations have confirmed, or at any rate not refuted, the hypothesis, is the law assumed to exist. It is the mere fact that they succeed in uncovering essential relationships between objects-in-time that gives physics its *raison d'être*. And as a by-product, this success also vindicates the fundamental premise of physical research—the rejection of animism.

Everything turns around the factual success of the hypothesis or model. Nothing is more alien to the spirit of scientific enquiry in physics than to display any boldness in championing a successful model as truly representative of the underlying law. For the epistemology of this science is essentially the epistemology of pragmatism: a hypothesis is assumed to be true if it "works," that is, as long as it helps to explain observations. Nothing precludes that future observations jeopardise a theory, or at least lead to major revisions and qualifications. And nothing precludes that some hypothesis that hitherto has been rejected suddenly becomes a useful explanation in the light of new data.

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Physicists would boldly insist on their views only if someone denied the facts, established by observation, which their theories seek to explain. But, for good reasons, nobody ever challenges these facts.

The essence of pan-physicalism (or positivism) is the rejection of animism in the field of human action and human society. The best-known example is macro-economic modeling. The macro-economist implicitly assumes that the individual members of the society he models do not make choices, and that human behaviour can be fully explained in terms of the circumstances of action. The fallacy of this approach should be obvious to any impartial mind. Pan-physicalism is based on the denial of the fundamental fact of the social sciences: the existence and pervasiveness of human choice. The sterility of macro-economic modeling and of all similar approaches is, therefore, anything but surprising. Not a single new economic law has been established by such methods, despite decades of generously-funded research pursuing even the most fanciful hypotheses.

It might seem somewhat surprising to notice that the sterility of positivism in the social sciences did not diminish the fervour of ever-new generations of positivists, and their apparent lack of realism did not discourage their sponsors. Hans-Hermann Hoppe has pointed out that the main sponsors of positivism in the social sciences were the western governments, the most important employers of social scientists, and that this government support was no accident because positivism in the social sciences is, by its very nature, one of the pillars of interventionism and the welfare state.[7]

We might also notice the importance of a psychological factor: the popularity of the physicist's mindset among the average social scientist. In the methodology of physics, even the prolonged failure to find workable theories is something entirely normal. In physics, there is no such thing as an "obviously bad theory" since the theories in physics do not describe any experienced relationships in the first place, but only stipulated relationships; and good theories are identified only ex post. But in the field of physics, it *is* warranted to look forward optimistically to the eventual success of one's model building even in the face of continued failures. For here we have all reasons to assume that laws relating physical objects among one another do exist, or, at any rate, we cannot exclude from the outset that such laws exist. In the

[7]See Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism* (Boston: Kluwer, 1989), chap. 8.

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realm of human action, by distinct contrast, a similar optimism would be entirely unwarranted because here, the possibility of a full explanation of human action in terms of other events *can* be excluded from the outset. The pan-physicalist application of the methods of physics in economics is doomed to fail because the very nature of choice makes it impossible that human action, whatever its concrete manifestations in thought processes or behaviour, is fully determined by events outside of the action under consideration.[8]

EQUILIBRIUM AND EQUILIBRATION

Twentieth-century economic science has been dominated by what could be called the equilibrium or perfect-competition paradigm.[9] Most economists have assumed that economic laws describe features of economic equilibrium and, based on this assumption, they have been mainly interested in various formal and substantive features of economic equilibrium: price formation in equilibrium, the relationship between equilibrium prices, the conditions for the existence, emergence, and stability of equilibrium, etc.

The economists of the Austrian School have constantly denied the validity of the basic assumption. In their eyes, equilibrium economics is but a minor part of economic science and most economic laws do not depend on the question whether equilibrium exists or how likely it is to come about.[10] There could be no such thing as an economic

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[8]Hoppe has this in mind when, in his *Kritik der kausalwissenschaftlichen Sozialforschung*, he claims that no "causal-scientific" research is possible in the social sciences. He points out that the entire positivist research agenda in the social sciences involves a performative contradiction. For human action can be subject to causal laws only if there is strict constancy in our thought patterns. The positivist social scientist, however, seeks precisely to add to our knowledge and, thus, to overthrow traditional patterns of thought and action. His very research is, therefore, doomed to invalidate the assumption on which it relies. Similar, though less comprehensive analyses of this problem are most notably in Oskar Morgenstern, *Wirtschaftsprognose* (Vienna: Springer, 1928); Adolf Bauer, *Die freie und unberechenbare Mensch—Kritik der Markt-, Meinungs-, und Motivforschung* (Nuremberg: Glock and Lutz, 1961); and in R.E. Lucas, "Econometric Policy Evaluation: A Critique," *Journal of Monetary Economics* Supplementary Series 1 (1976), pp. 19–46.

[9]See Frank Machovec, *Perfect Competition and the Transformation of Economics* (London: Routledge, 1995).

[10]See Hülsmann, "A Realist Approach to Equilibrium Analysis."

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law that presupposed the existence of equilibrium, or even its mere tendency to exist, for such a law would contradict the nature of human choice. Since man is free, he can err at any time. Nothing in the nature of human action warrants the claim that man never errs (state of permanent equilibrium) or even that he has the tendency to avoid error.[11]

But why has this inner contradiction of their approach escaped the attention of the champions of equilibrium economics? The answer is simple and relates to what we said above about the mindset of the twentieth-century mainstream economist, whose methodological and epistemological views were impregnated by pan-physicalism.

The essence of scientific explanation is to give a law-based account of facts in terms of other facts, so scientists search for and study laws that exist among the things observed in our world. A thing X is scientifically "explained" if we can show that there exists a constant (e.g., causal) relationship between X and another thing Y. The problem of the equilibrium paradigm in economics is that its adherents look for exactly the same type of relationship as do their colleagues in the natural sciences. Economists insist on explaining observed behaviour *exclusively* in terms of other observations. The equations of general equilibrium theory, market participants are represented—or "mapped" as it were—through utility functions, are a good illustration. Thus, the very premise of general equilibrium models is that market participants are automatons, rather than human beings. They do not choose and do not act.

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[11]This lack of a tendency to avoid error concerns only error in the *praxeological* sense of choosing any other but the most important course of action. There is a tendency to avoid error in the technological sense of not choosing a means suitable to attain a given end, but equilibrium economics concerns only error in the praxeological sense. As a consequence, all theories of equilibration are untenable, including the Hayek-Kirzner theory of equilibration through entrepreneurial learning or "discovery;" see Jörg Guido Hülsmann, "Knowledge, Judgment, and the Use of Property," *Review of Austrian Economics* 10, no. 1 (1997), pp. 23–48. Mario Rizzo has forcefully criticised Hayek's and Kirzner's view that the market is equilibrating, although his own contribution is not satisfactory, either. In the "dynamic tendency to discover" that he advocates, there is no room for the notion that equilibrium be reached by some sort of necessity. Which use does he then make of equilibrium at all? This question needs to be answered—and Rizzo has not yet answered it—for otherwise it seems to be impossible to make sense of "discovery" itself. See Mario Rizzo, "The Tendency to Discover: What Does it Mean?" (working paper, 2000).

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It is true that human behaviour is, to a large degree, conditioned by other events. When the quantity of money increases (inflation), people pay higher money prices, so inflation causes an increase of the price level. When people are "insured" against unemployment, there is a moral hazard to become voluntarily unemployed, so unemployment insurance causes an increase of unemployment. Price controls prevent willing and able buyers to acquire the goods they desire, so price controls create shortages, or they increase shortages that already exist.

But problems emerge even in these seemingly clear-cut cases as soon as we set out to give a precise formulation of the way external events determine human behaviour. In particular, what does it mean to say that inflation causes an increase of the price level, or that unemployment insurance causes an increase of unemployment? As compared to what do the price level and unemployment increase, according to these laws? The fact is that these laws—as pertinent as they might be on other grounds—cannot be established on the mere basis of systematic observations. Inflation does not always lead to a higher price level than the one that existed at the inception of the inflation. Sometimes we observe money inflation followed by a stable or decreasing price level. Similarly, in some cases, we observe price ceilings but no shortages, and unemployment insurance does not always go in hand with unemployment. In all these cases, other factors intervene simultaneously, factors that partly or totally offset the operation of the factor under consideration. This is so, for example, when the effect of inflation on money prices is offset by economic growth, or when unemployment insurance is counterbalanced by a strong work ethic.

Now the crucial question is this: considering the great number of factors that determine human behaviour often in opposite directions, how do we verify or refute any hypothesis at all? How can we deliver a scientific proof that inflation causes money prices to increase, or that unemployment insurance causes unemployment to increase? Before we venture to suggest a solution for this problem, we must stress the fact that general equilibrium theory (or, for that matter, any other method inspired by the positivistic research hypothesis) is not a solution. The reason is, of course, the existence and pervasiveness of human choice. Equilibrium models of human behaviour cannot be born out by observed facts in the same way that models of the physical world can be born out by observed facts, because human behaviour is not exclusively determined by observable facts, but is also self-determined by human choice.

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This raises a question: What do we mean when we use the term "economic law"?[12] If economic laws are not relationships between observable events, then what are they? Some economists claim that economic laws refer to observations that could be made if only one condition of action varied while all other conditions remained frozen. Others claim that economic laws refer to observations that could be made if all market participants possess perfect knowledge or rational expectations, etc. All these solutions sought to salvage the central positivist tenet (that economic laws are relationships between observable events) by claiming that certain observations could be made if certain hypothetical and unreal conditions were given. Thus, one error induced another as methodological prejudice inspired the construction of various methodological crutches.

THE INVISIBLE SIDE OF CHOICE

So far we have argued that the very nature of choice makes it impossible to apply in the social sciences those methods that are used by the great majority of professional economists.

The question arises, then, whether choice is subject to any law at all. Some economists have indeed argued that it is not.[13] In their eyes, there are no laws that govern choice at all. Choice is, by its very nature, unrelated to any other event, so attempts to uncover laws of human action are futile. The social world is in permanent and unbound change, transforming itself into ever-new settings, offering again and again unheard-of vistas, just like the indeterminable vistas of a grand kaleidoscope. This kaleidic universe cannot be explained in terms of any general laws of human action without squeezing it into some sort of a Procrustean bed. Scientific accuracy, then, requires abstention from

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[12]Menger, in *Grundsätze*, p. 8, surmised that the existence of choice would jeopardise economics as an exact science. See also the exchange between Thornton, Cairnes, and Leslie from the Fall of 1866, reprinted in *The Economic Writings of William Thornton,* ed. P. Mirowski and S. Tradewell (London: Pickering & Chatto, 1999), vol. 1, pp. 73ff. The exchange included a criticism of what had been supposed a fundamental economic law: J.S. Mill's explanation of how demand and supply govern prices. On the methodological debate on demand curves in the 1950s and 1960s, which raised similar issues, see Daniel Hausman, *Essays on Philosophy and Economic Methodology* (Cambridge: Cambridge University Press, 1992), chap. 11.

[13]See G.L.S. Shackle, *Epistemics and Economics* (Cambridge: Cambridge University Press, 1972); and Ludwig Lachmann, *Expectations and the Meaning of Institutions* (London: Routledge, 1994), chap. 16 and passim.

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any ill-conceived search for economic laws. The true social scientist must be content to describe the transformation of the world without any pretension to know its laws.

However, this view is unwarranted since *there are* laws of choice, and therefore of human action. These laws make various causal and non-causal explanations of human action possible. The key to our argument lies in the fact that human action contains both realised and unrealised parts.[14] Human action is realised in the actual movement of the body and in the actual activity of the mind. But it also contains two types of unrealised parts: the ends sought after and the foregone alternatives. This fact is almost universally acknowledged, but while the analysis of the subjective and objective rôle of ends has attracted at least some attention among economists (under headings such as "intentionality" and "meaning"), the analysis of foregone alternatives, the hidden side of choice, has been neglected. Scientifically speaking, it is almost a virgin field.[15] Yet, it is precisely in this field, in the relationship between choice alternatives, that virtually all laws of human action can be found.[16]

In what follows I will argue that the bulk of economic laws are based on relationships that are contained *within* choice. The visible part of a choice, the realised alternative, brings an observable fact into being, for example, a walk in a park. This fact stands in certain essential relationships to the unrealised alternatives of the same choice, for example, staying home to watch TV, staying home to eat ice cream, etc. These unrealised alternatives are the other side of choice, its invisible part. They have no actual existence for the very reason that they are *un*realised alternatives. But although they are not observable facts, they still are facts, namely, invisible counter-facts of the visible facts established by a given choice, and therefore stand in essential relationships with these visible parts of human action.

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[14]See Jörg Guido Hülsmann, "Economic Science and Neoclassicism," *Quarterly Journal of Austrian Economics* 2, no. 4 (Winter 1999), pp. 4ff.

[15]In economic science, the only exception in more recent times has been the debate concerning the nature of costs and opportunity cost. In philosophy, Antony Flew seems to be alone among modern academics in noticing that it is crucially important for social analysis to take account of "contrary-to-fact-alternatives." See Flew, *Thinking About Social Thinking*, pp. 126f. Flew does not elaborate on this observation, however.

[16]"Virtually" accounts for the fact that some laws of human action relate to the subjective and objective relationships between means and ends.

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In short, the essential relationships that choice brings about between what exists and what could have existed instead are the counterfactual laws of human action. Since the choices that are actually taken stand in counterfactual relationships to the choice alternatives that could have been taken instead, real-world human actions stand in counterfactual relationships to alternative actions that would have been possible.[17]

Counterfactual laws, therefore, do not concern relationships between the perceptible parts of human action (for example, observed behaviour) and other observed events. Rather, they are relationships *within* human action linking its visible and invisible parts. Using these laws to explain observed human behaviour, we can relate the state of affairs that we observe as a consequence of this behaviour to a counterfactual state of affairs that could have existed instead. The characteristic method of economic science by which one comes to identify these laws is counterfactual analysis—relating the seen and the unseen of a choice to one another. Thus, we explain what really exists by comparing it to what could have existed instead.

In distinct contrast to the laws known from other sciences (the laws of physics, for example), the counterfactual laws of human action are not mere stipulations or hypotheses that are held to be true on the pragmatic ground that they "work." Rather, by human reason, they

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[17]This meaning of the expression "counterfactual" has to be distinguished from the meaning that Hausman and others sometimes attach to it. In that meaning, counterfactual claims are interpreted as conjectural or *modal claims*, that is, as more or less unrealistic claims "about how things would be, were various complications absent." Daniel M. Hausman, *Capital, Profits, and Prices: An Essay in the Philosophy of Economics* (New York: Columbia University Press, 1981), pp. 146f., also 129f.; see also Daniel M. Hausman, *The Inexact and Separate Science of Economics* (Cambridge: Cambridge University Press, 1992), pp. 129f.; and Donald McCloskey, "Counterfactuals," in *The New Palgrave Dictionary of Economics*, ed. J. Eatwell, M. Millgate, and P. Newman (London: Macmillan, 1987), vol. 1, pp. 701–3.

The paradigmatic case study serving as a model for these epistemological interpretations is R.W. Fogel, *Railroads and American Economic Growth: Essays in Econometric History* (Baltimore: Johns Hopkins Press, 1964). The analysis of the counterfactual laws that we have in mind must also be distinguished from the conjectural or modal analyses of game theorists who describe their work as "counterfactual reasoning." See, in particular, Robert Stalnaker, "Knowledge, Belief, and Counterfactual Reasoning in Games," *Economics and Philosophy* 12 (1996), pp. 133–63.

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are immediately ascertainable, so economists are in the happy position that they can have first-hand knowledge of *all* elements of their explanations: the fact to be explained, the explaining fact, and the relationship between these two facts.[18]

EXACT COUNTERFACTUAL LAWS

Two types of counterfactual laws can be distinguished. In this present section, we will deal with those counterfactual laws that allow us to give *exact* causal explanations of human action. In the next section, we will turn to "case-probable counterfactual laws"—better known as "tendencies"—which concern causes that only have a *probable* effect on human behaviour.

Let us formulate some exact economic laws in a way that their counterfactual nature becomes evident. Consider the following:

- A person considers that the course of action that he follows is more important than alternative courses of action that he could follow instead;
- wrong investment decisions reduce the welfare of the owner of the invested resources below the level it could otherwise have reached;
- the division of labour between individuals is more physically productive than autarkic production by each individual would have been; market exchanges benefit both partners because, at least when the exchange takes place, each of them prefers it to alternative courses of action;
- each new product is an additional potential market for other commodities, so the owners of these other commodities are now better off than they would have been without the additional production;
- increased saving makes possible a higher consumption in the future than would have been possible without this additional saving;

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[18]Cairnes first stressed that economists can have such knowledge, although he did not recognise the counterfactual nature of these economic laws; see John E. Cairnes, *The Character and Logical Method of Political Economy* (London: Macmillan, 1875). For other fields besides economics where such knowledge can be acquired, see, for example, Barry Smith, "An Essay on Material Necessity," *Canadian Journal of Philosophy* Supplementary vol. 18 (1991); and Barry Smith, "Realist Phenomenology," in *Encyclopedia of Phenomenology*, ed. L. Embree (Boston: Kluwer, 1997).

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- increased saving diminishes present consumption below the level it would otherwise have reached;
- government projects reduce the amount of capital available in all other industries, thereby reducing wage rates attainable in other industries below the level they would otherwise have reached;
- increases or decreases of the quantity of money do not increase the wealth of a nation above the level it would otherwise have reached, nor do they decrease its wealth below the level it would otherwise have reached.[19]

As can be gathered from these examples, counterfactual laws of human action really exist, and they are exact and universally valid. Their very existence counters the view that economic science is fundamentally inexact.[20] He who ventured to deny the existence and exactitude of counterfactual laws would have to deny that human beings choose, that choice involves different alternatives, and that it takes place in a physically finite universe. Moreover, the explaining facts referred to in this and the other counterfactual laws mentioned above are *not* fictitious. All elements of counterfactual analysis are realistic.

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[19]Some examples of the above shortlist have been taken from Hans-Hermann Hoppe, *Democracy—The God That Failed* (New Brunswick, N.J.: Transaction, 2001), p. xvii. This is not the place to defend these propositions, not only because *exempla sunt odiosa*, but also because a sufficient defense already exists. The present work does not claim that counterfactual laws are an entirely new class of economic laws, but that a large class of already known economic laws have a counterfactual nature. Thus, we can rely on the works where these laws—though not their ontological status—are sufficiently well explained for all practical purposes; see in particular Mises, *Human Action*, part six; Ludwig von Mises, *Kritik des Interventionismus* (Jena: Fischer, 1929); Murray N. Rothbard, *Power and Market*, 2nd ed. (Kansas City: Sheed Andrews & McMeel, 1977); Murray N. Rothbard, *Man, Economy, and State*, 3rd ed. (Auburn, Ala.: Ludwig von Mises Institute, 1993), chap. 12; Hoppe, *A Theory of Socialism and Capitalism*; and Hoppe, *Economics and Ethics of Private Property*.

[20]See, for example, Hausman, *Capital, Profits, and Prices*, pp. 120ff., 133ff., 148ff.; Hausman, *The Inexact and Separate Science of Economics,* pp. 123ff., 205ff.; and John Sutton, *Marshall's Tendencies: What Can Economists Know?* (Cambridge, Mass.: Massachusetts Institute of Technology, 2000). It is true that Hausman's characterization of economic science as inexact refers more narrowly to the neo-classical economic mainstream. But one can gather from the titles of his books that he makes more general claims on behalf of this characterization, and, as we have shown, these claims are unfounded.

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It is a matter of fact that human beings choose, that to choose means to choose between alternatives, and that only one alternative can become a fact whereas all other alternatives remain counter to fact.[21] Finally, counterfactual analysis is an act of reflection on the invisible structural features of human action, such as choice, and counterfactual laws are *a priori* laws that, by their very nature—linking the factual to the counterfactual—cannot possibly be verified or refuted by observations.[22]

Notice that, in the above examples, we did not qualify the counterfactual laws by stating our assumptions about the behaviour of all the other factors determining the state of the economy that we did not explicitly consider. In particular, we did not use the common qualifier of *ceteris paribus*. We did not say that, only *ceteris paribus*, increased saving makes possible a higher consumption in the future than would have been possible without this additional saving; or that, only *ceteris paribus*, increases or decreases of the quantity of money do not increase the wealth of a nation above the level it would otherwise have reached. Rather, we presented these laws as absolutes that are not conditioned by any other factors, and rightly so.

Because a counterfactual law relates an observable fact to a counterfactual alternative, it is immaterial which other facts exist besides the one under consideration, how these other facts are modified throughout time, and how they influence the course of events. Neither do we have to concern ourselves with what the acting persons know about the future. All this cannot affect the validity and applicability of our knowledge of counterfactual economic laws. For example, as we have already pointed out, the division of labour between individuals is more

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[21]Let us emphasize that the counterfactual laws ruling the relationship between the realized and the unrealized choice alternatives do not depend at all on the contingent strategies, knowledge, and beliefs of the persons under consideration. The contingent—and, to a certain extent, choice-dependent—character of strategy, knowledge, and beliefs creates considerable difficulties for "counterfactual reasoning" in the sense of Stalnaker, "Knowledge, Belief, and Counterfactual Reasoning in Games." No such problems exist in the field of counterfactual laws as we have identified them.

[22]Since we rely on the economic works of Mises and his followers, it might be useful to point out that, as our argument shows, it is not necessary, as Stephen D. Parsons seems to suggest in "Mises, the A Priori, and the Foundations of Economics: A Qualified Defence," *Economics and Philosophy* 13 (1997), pp. 175–96, to give a Kantian reading to Mises in order make the case for *a priori* economic laws. On this point, see Hülsmann, "Introduction" to Mises, *Epistemological Problems of Economics*.

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physically productive than autarkic production by each individual would have been—whatever the present level of taxation and accumulation of capital, the character structure of the society, the weather, etc. may be. Any choice that is actually taken has an impact on the real world that can be compared to the impact that *would have* resulted from the realisation of some other choice alternative. For example, the decision to print more paper money does not increase the wealth of a nation beyond the level it would otherwise (in the case of the decision *not* to print more paper money) have resulted. Counterfactual laws exist irrespective of what the conditions of action are and irrespective of how these conditions change in the course of time. Hence, instead of *qualifying* economic laws by the ceteris-paribus clause, one merely has to *clarify* their counterfactual nature by adding the expression "than otherwise."

Another important implication of the counterfactual nature of economic laws is that they enable us to make exact quantitative statements about the real world. Human action transforms its environment. Yet, this means nothing other than that it modifies the quantitative relationships between things in the world. For example, if Paul tailors a suit out of three square-meters of raw fabric, then he creates a state of affairs in which there is one more suit than would otherwise existed and three square-meters of raw fabric less than otherwise. On the basis of such simple considerations, we can discover counterfactual laws about the quantitative impact of human action. And such laws are, of course, genuinely economic laws.

Clearly, we do not *measure* the quantitative effects of choice. Rather we arrive at statements like "government projects reduce the amount of capital that otherwise (without the inception of these projects) would have been available in all other industries" or "increased consumption now means that consumption in the future can only be less than otherwise." It is such comparative statements about quantities that economists can infer from the study of choice modifying the conditions of action.

Thus, we do not have to neglect quantitative issues, but our insights are limited to the impacts of quantitative *differences*. All we can say about quantitative effects runs in terms of more or less, of higher or lower, etc. Below, we will deal with the question whether we can go beyond these comparative statements about quantities. In particular, we will show that economic theorems can never be "summed up."[23]

[23]Mill claimed that the "effect produced, in social phenomena, by any complex set of the circumstance, amounts precisely to the sum of the effects of

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If ten people buy milk to drink it and another five persons buy milk to produce pudding, then certainly the demand of the former *adds* to the demand of the latter—in the sense that both make the price of milk higher than it would otherwise have been. But no statement can be made about *which part* of the price of milk was due to the demand of the drinkers and which part was a consequence of the demand of the pudding makers.

Case-Probable Counterfactual Laws (Counterfactual "Tendencies")

Let us now turn to the second class of counterfactual laws—those laws that do not denote an exact relationship between human behaviour and a counterfactual reality, but merely a probable relationship or tendency. Consider first the following examples:

- an increased demand for a good involves a higher market price for the good than would have obtained without this increase;
- a higher supply of a good decreases its market price below the level it would otherwise have reached;
- taxation makes the taxpayer more present-oriented than he would otherwise be;
- increases of the quantity of money lead to higher market prices than would otherwise have been established.

These and all similar laws differ from the exact laws we discussed in the previous section. They do not denote exact relationships, but relationships that only hold true "at the margin." It is not in all cases true, for example, that a higher supply of a good actually brings about a lower price for this good than would otherwise have obtained on the market. Depending on the value scales of the market participants, the price might in some cases not decrease as a consequence of the increased supply. Still it is true that the additional units that now come on the market satisfy additional needs, and that these needs are less important, from the point of view of the buyers, than the ones that would have been satisfied with a smaller supply. And, as a consequence, the market participants will buy these additional units, in a great number of

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the circumstances taken singly." John Stuart Mill, *System of Logic*, 8th ed. (London: Longmans), vol. 2, p. 488.

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cases, only at a lower price.[24] Again, whether the price will drop depends on the concrete data of the case, but the increase of the supply has at least the "tendency" to decrease the price.

Similarly, increases in the quantity of money bring about higher market prices in the following way: The new money decreases the marginal value of money in the eyes of its holders. This means that

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[24]In private correspondence, Cristian Comanescu has objected that some of these laws—he referred in particular to the laws of supply and demand—are not valid quite as generally as we here claim; a similar comment came from Professor Roderick Long. This is so because supply and demand are not necessarily independent of one another. Consider the case that an increased supply of tomatoes (accidentally) *causes* an increase of demand for these tomatoes. In this case, Comanescu argues, it is not necessarily the case that the tomato price is lower than it otherwise would be. He concludes that it would not be sufficient to clarify the counterfactual law under consideration by saying "than otherwise." Rather, it is necessary to account for such cases of accidental causation through a more elaborate formula, for example, by saying "than otherwise, other relevant things being unaffected" or "than otherwise, all things not systematically connected with the demand for tomatoes running their course without being 'accidentally' affected by the demand for tomatoes." Now, it is true that such cases of accidental causation might exist, but, as Comanescu admits, they only affect *some* of the laws that we mentioned. It follows that these cases do not really concern the existence and nature of counterfactual laws *per se*, and that there is therefore no reason to describe such laws by referring to anything else but the concise "than otherwise."

Fundamentally, Comanescu's criticism does not at all concern the accurate description of the counterfactual nature of economic laws. It concerns a different and rather particular problem that we encounter most notably in the laws of demand and supply. We cannot set out examining this problem here in any detail. Suffice it to say, however, that the following three considerations might play a role in any such examination. 1) Insofar as we are concerned with the description of laws, it is irrelevant or at least of secondary importance to take account of accidental relationships between phenomena. A higher supply goes essentially in hand with a lower price. This law holds true even if its operation is accidentally modified through other factors. 2) If an increase of demand is (accidentally) caused by an increase of supply, we have to raise the question of whether this is not a case in which the good under consideration—or the relevant unit of this good—has changed. 3) In a similar vein, one might also come to the conclusion that the laws of demand and supply are based on the very premise of an independence of demand and supply. In other words, the very definition of "supply" and "demand" involves their independence from one another. If this condition does not hold, these laws would not apply.

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they will now a) spend more money than they otherwise, in the absence of this increase, would have spent, and/or b) buy less money in exchange against their work or other parts of their property than they otherwise would have bought. In both cases, the money prices paid in the exchanges are higher than they would have been without the increase of the quantity of money. Yet, again, this chain of causation is not an exact one. Not in all cases will the additional money units change the relative positions of money units and units of other goods on the value scales of the individual market participants. In some cases, the increase of the quantity of money will not be big enough to induce the cash holder to spend more money than he would otherwise have spent, or to buy less money than he would otherwise have bought. But, as in our other example, it remains true that the additional money units have at least the tendency to bring these effects about.

In short, the knowledge of a counterfactual tendency does not put us in a position to give an exact determination of human behaviour. But still it *is* knowledge about a factor that potentially causes a certain effect in human action. He who ventures to deny the existence of such tendencies would have to deny that the marginal value of a good depends on the supply owned by the acting person.

Mises discussed some of these problems under the heading of probability. He defined the nature of probability as follows:

> A statement is probable if our knowledge concerning its content is deficient. We do not know everything which would be required for a definite decision between true and not true. But, on the other had, we do know something about it; we are in a position to say more than simply *non liquet* or *ignoramus*.[25]

He then went on to distinguish two kinds of probability: class probability (which he also calls frequency probability) and case probability. In the field of human action, Mises argued, the relevant probability concept was case probability, which he defined as:

> Case probability means: we know, with regard to a particular event, some of the factors which determine its outcome; but there are other determining factors about which we know nothing.[26]

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[25]Mises, *Human Action*, p. 107.

[26]Mises, *Human Action*, p. 110.

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This characterisation of case probability fits the counterfactual tendencies we have discussed above. Knowledge of such tendencies is deficient knowledge about human action. Increases in the quantity of money have the tendency to increase money prices, but whether this will actually happen depends on other conditions—in particular, on the individual value scales of the concrete case—about which we know nothing.

Simultaneous Changes: Additivity vs. "Summing Up"

Despite the fact that, in reality, we observe countless simultaneous changes, in counterfactual analysis, we analyse only one change at a time. We have already seen that this fact neither reduces the exactitude nor diminishes the applicability of economic science. Still, we have to examine how we can integrate different economic laws which describe different aspects of observed reality to gain an understanding of the whole picture that our real world presents to us.

Consider the following example of two simultaneous changes. If an increased demand for tomatoes is accompanied by the discovery of new growing techniques for them, we can say that the shift of demand will lead to higher prices than otherwise and that the technological advance will lead to lower prices than otherwise. Whether the observed tomato prices will in fact be higher or lower *than before* is a question to which our law gives no clear-cut answer. Yet, again, the validity and exactitude of this law do not suffer at all from this problem. For what we say in the above example is that increased demand will lead to higher prices than otherwise. Whatever other changes may occur that push the price above or reduce it below its previous level, increased demand for the good must exercise an additional influence. It has the tendency to lead to a higher price for it than would have been established on the market without this influence.

As mentioned above, we do not have to concern ourselves with the other conditions of actions not taken account of in our analysis. For each change exercises *additional* effects on action. The change under consideration will necessarily bring about more or less goods, higher or lower prices than would have resulted without *this change* occurring. Mises recognised this very clearly in his analysis of the additional influences of inflation and deflation.

> Each change in the money relation takes its own course and produces its own particular effects. If an inflationary

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> movement and a deflationary one occur at the same time or if an inflation is temporally followed by a deflation in such a way that prices finally are not very much changed, the social consequences of each of the two movements do not cancel each other. To the social consequences of an inflation, those of a deflation are added.[27]

Or, consider the law that a risk component and a price premium add to the pure interest rate: "a whole structure of interest rates will be superimposed on the pure rate, varying positively in accordance with the expected risks of each venture."[28] Each of the different factors exercises an additional impact on the interest rate, even if our counterfactual theory of the interest rate cannot tell us anything about how high any concrete interest rate will be.[29]

From this it follows that the counterfactual laws of human action are directly applicable to the real world. They do not need to be complemented by specially constructed dynamic models because they *are* dynamic. They refer to all present and future events that are in any way influenced by the choice under consideration, and they are true irrespective of whether all other data are frozen or subject to kaleidic change.

We have tried to stress this important fact by abandoning the use of the qualifier *ceteris paribus*. Indeed, there is no need to qualify our results at all. Whenever the assumed condition is given (which we can find out by simple observation or discursive reasoning),[30] the counterfactual relations as they are described by the law exist as well. We only have to make it clear that our law refers to a counterfactual standard of comparison by adding "than otherwise" to its propositions.

As we have said, the only question to which theoretical analysis provides no answer is *how high* prices will be as the result of all intervening influences. He who seeks the latter kind of statements may belittle the results of counterfactual analysis. However, we can tell him three things. First, there is no other method that could procure

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[27]Mises, *Human Action*, pp. 417f.

[28]Rothbard, *Man, Economy, and State*, pp. 497ff.

[29]See, for example, Mises's study of the "inner" determinants of the value of money, which he contrasted with the analysis of the whole money relation, in *Theorie des Geldes und der Umlaufsmittel*, 2nd ed. (Munich: Duncker & Humblodt, 1924), pp. 103f.

[30]See Mises, *Epistemological Problems of Economics*, pp. 24f.

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for him that type of quantitative law. Second, for the practically most-relevant purposes, namely, for societal decision-making, the results of the theoretical analysis are entirely sufficient, for they tell us whether a given measure will rather increase or diminish output, whether it will bring more or less unemployment, etc., and this is all that we are asking for in these matters. Third, these results of the theoretical study of changes are valid for all times and for all places, and this is certainly no small advantage.

Most economists do not perceive these facts with the necessary clarity. They usually labour under John Stuart Mill's exaggerated interpretation of the nature and scope of economic laws that hold true only as tendencies. For Mill, *all* economic laws denote mere tendencies, and he also seems to suggest that the knowledge of tendencies does not put us in a position to make exact propositions about reality as it is here and now. Consider Mill's classic statement:

> It is evident . . . that Sociology, considered as a system of deductions *à priori*, cannot be a science of positive predictions, but only of tendencies. We may be able to conclude, from the laws of human nature applied to the circumstances of a given state of society, that a particular cause will operate in a certain manner unless counteracted; but we can never be assured to what extent or amount it will so operate, or affirm with certainty that it will not be counteracted, because we can seldom know, even approximately, all the agencies which may co-exist with it, and still less calculate the collective result of so many combined elements.[31]

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[31]Mill, *System of Logic*, vol. 2, p. 491. See also John Stuart Mill, *Essays on Some Unsettled Questions of Political Economy*, 2nd ed. (London: Longmans, 1874), pp. 149ff. Similarly, Vilfredo Pareto stated in his *Manual of Political Economy* (New York: Kelley, 1971), chap. I, § 11: "Since we do not know any concrete phenomenon completely, our theories about these phenomena are only approximations." Richard Whately emphasized the distinction between two concepts of tendency. The first connotes "the existence of a cause which, if *operating unimpeded*, would produce that result" while the second refers to "the existence of such a state of things that that result *may be expected to take place*." See Richard Whately, *Introductory Lectures on Political Economy*, 3rd ed. (London: Parker, 1847), pp. 231ff., emphasis in the original; see also Richard Whately, *Elements of Logic* (New York: Harper, 1856), appendix I, entry "tendency." Whately's distinction also fails to grasp the nature of comparative propositions about choice.

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In a sense, it is to be sure correct that statements like "prices will be higher than otherwise in consequence of an increased demand" are not "positive predictions" because they do not tell us how high observed prices will be. Yet, it does not follow that such statements are not exact and universally valid, or that, as Mill has successfully insinuated, scientific enquiry in the field of economics must seek to derive by theoretical means the compound result of combinations of circumstances in which action takes place, "to put all these effects together, and, from what they are separately, to collect what would be the effect of all the causes acting at once." Mill's prejudice in favour of this type of approach has led him to the fatal conclusion that, if we ever overlook one factor operating in reality, "our premises will be true, and our reasoning correct, and yet the result of no value in the particular case."[32]

But this is not true if the "particular case" is one of practical decision-making, as Mill himself admits. Consider the law that higher taxation of inheritance reduces the amount of savings and, consequently, the productivity of the economy below the level it would otherwise have reached. We do not know the other factors that determine savings and productivity. Yet, as far as our law goes, we derive it by correct reasoning, based on true premises, *and* obtain a result of great practical value. It might certainly be interesting to know whether a tax of x percent on inheritance reduces productivity by y or z percent. However, the crucial information is that this tax *does* reduce productivity.[33]

Moreover, even when the application of this law is not in practical decision-making but in historical analysis, one cannot claim, as Mill does, that it would be of no value. It is valuable to know whether the misery of large parts of the population, which could be observed at many places in Europe during most of the nineteenth century, resulted

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[32]Mill, *System of Logic*, vol. 1, pp. 59f. It is clear that, in Mill's view, there can be no exact science of human action short of a total model of life. Only such a model could bring social phenomena "under laws comprehending the whole of the causes by which the phenomena are influenced." Mill, *System of Logic*, vol. 2, p. 432.

[33]In a similar vein, Mises, in *Kritik des Interventionismus*, pp. 46f., admitted that frictions might hamper pricing on the labor market. But he argued that the relevant question in curbing unemployment was whether the concrete political measure under consideration was likely to *reduce* unemployment—that is, in our terms, whether the proposed policy would make it lower than it otherwise would be.

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as a consequence of, or despite, the spreading of capitalism. And it is also valuable to know whether the Great Depression of the early 1930s occurred because of, or despite, the regulation of the money supply through the Federal Reserve. Clearly, such information is valuable even if we could never *quantify* the impact of capitalism on nineteenth century poverty, or of the Federal Reserve on the Great Depression.

Let us now deal with the problem of whether one *could* go beyond comparative laws and quantify the impact of a given factor in absolute terms. Assume that we know *all* factors that have some impact on the state of affairs under consideration. In short, we know everything about the factors that determine the conditions of action. Could we then find laws about their compound effect? Could we then, for example, make scientific statements (predictions) like "under the given conditions, a tax increase of 10% will lead to a reduction of total savings by 3%?"

According to Mill's thesis, this would be possible. However, this thesis is clearly wrong because it disregards the existence of choice. Choice is not determined by the conditions of action (it would indeed be difficult to say what we mean by the word "choice" if it were otherwise). It can only be explained by reference to its counterfactual alternatives. All we can say, to come back to the example of the increase of the inheritance tax, is that this tax increase *reduces* savings and productivity in comparison to a counterfactual standard. *How much* it will reduce them depends on the choices taken at a particular time and at a particular place by the individuals who are subject to this tax.

In short, while the *relative quantitative* impact of a tax increase is governed by counterfactual economic laws, the *absolute quantitative* impact of the tax increase will depend on the individual case. Economists cannot say, on the *a priori* grounds provided by finitude of the world, *how much* higher or lower a price will be or has been in consequence of a change. There is no scientific (that is, fact-based) possibility to answer this question.[34] And even if we could by other means (for example, by lucky guess) answer it in one case, we will not be able to generalise these findings.

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[34]See Mises, *Theory and History*, pp. 274, 314f. See also F. Ballvé, "On Methodology in Economics," in *On Freedom and Free Enterprise*, ed. M. Sennholz (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1956), pp. 132f.

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THE REALIST FOUNDATIONS OF COUNTERFACTUAL ANALYSIS

Face to face with the existence of counterfactual laws, we have to enquire on which grounds we can make scientific assertions that involve the counterfactual. No other science seems to refer to anything else than what is undoubtedly part of the real world.[35] How can it be different in economics?

In what follows, I will try to answer this question in a somewhat systematic manner and explain on which grounds counterfactual laws enable us to explain the real world in a way that is both empirically meaningful and practically relevant. I will argue that counterfactual laws rely on three elementary facts, namely, that there are *heterogeneous* entities that compose our world, that these entities are *finite*, and that they are related through choice to alternative (counterfactual) entities that are also heterogeneous and finite.

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[35]In philosophy too, the problem of counterfactual analysis is a comparatively new field. A pioneer was Hans Vaihinger, *The Philosophy of "As If,"* 2nd ed. (London: Routledge & Kegan Paul, 1935). Also see Roderick Chisholm, "The Contrary-to-Fact Conditional," *Mind* 55 (1946); Nelson Goodman, "The Problem of Counterfactual Conditionals," *Journal of Philosophy* 44 (1947); Hans Reichenbach, *Laws, Modalities, and Counterfactuals* (1954; reprint, Berkeley: University of California Press, 1976); Daniel Lewis, *Counterfactuals* (Cambridge, Mass.: Harvard University Press, 1973); Nicholas Reicher, "The Ontology of the Possible," in *The Possible and the Actual: Readings in the Metaphysics of Modality*, ed. Michael J. Loux (Ithaca, N.Y.: Cornell University Press, 1979); Michael Woods, *Conditionals* (Oxford: Clarendon Press, 1997); and Charles Chihara, *The Worlds of Possibility* (Oxford: Clarendon Press, 1998).

With the notable exception of Antony Flew, whom we already mentioned, the crucial role of human choice as the readily ascertainable (not merely stipulated) relationship between facts and counterfacts has not been sufficiently recognized in this literature. Only some of Reicher's statements, e.g., in "The Ontology of the Possible," pp. 170, 173, come somewhat close to our line of argument when he emphasizes the "mind-dependency of hypothetical possibilities" and that "the *condition* of possibility . . . involves . . . a reference to the hypothetical . . . that would be infeasible in the face of a postulated absence of minds." Yet, even these statements are somewhat vague and possibly misleading, insofar as the expression "mind-dependency" is meant to suggest that the human will creates counterfactuals. Hausman, in *The Inexact and Separate Science of Economics*, pp. 296f., recognizes the pertinence of counterfactual analysis in the sense of Lewis as far as the analysis of causality is concerned, but does not see the relevance for economic science.

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The choosing person is confronted with a certain environment including his own body and person. His actions will to some extent modify this environment, which he transforms according to his ideas. He has to cope with *this* environment, however, and this means that he has to accept it as the totality of given conditions in which his actions take place.

Now, any set of conditions implies two things. On the one hand, it permits the success of some actions. On the other hand, it implies that other actions cannot be successfully executed. For example, in reading a certain book, I can learn about its contents by my own experience. This would be impossible if I did not read the book but spent my time cutting flowers in the garden, or if I had someone else tell me what was written in the book. On the other hand, reading the book makes it impossible to cut flowers at the same time. It also makes it impossible (at least for me) to listen to hard-rock concerts or to sell ice cream. It is obvious that uncountable similar statements, for this and for any other set of conditions, could be made. There are things that (only) the prevailing conditions permit us to do, and there are other things that cannot be done under these conditions. It is absolutely certain that this holds true for *any* set of conditions, even if one knows nothing about their concrete features. The reason, of course, is that all things are limited.

If conditions change by natural events, two things are implied. On the one hand it will render possible the success of actions that, hitherto, would have failed. On the other hand, it will render impossible the success of other actions that, hitherto, would have been successful. For example, if a strong wind starts to blow, it is impossible to play outdoor badminton. On the other hand, the strong wind increases the joy of sailing and the productivity of windmills.

Exactly the same result obtains if the conditions of action are modified by human choices. Indeed, whatever choice is taken, it will, on the one hand, render other actions successful that, otherwise, would have failed. On the other hand, it will render impossible the success of still other actions that, otherwise, would have been successful. The construction of a power plant will supply consumers with more energy than they otherwise could have used. Yet, it will also reduce the production of other goods, which could have been produced with the factors used in the construction of the power plant, below the level they could otherwise have reached.

When studying the implications of a change of conditions, we can therefore neglect all subsequent changes if we limit our investigation

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to what the change has rendered possible or, respectively, impossible. Each choice opens up a new universe for action and, at the same time, necessarily forecloses another one. By this very fact, both universes are *a priori* related to one another. And because both universes are composed of finite entities, the differences between these two universes can only be finite, too. Thus, there can be identifiable laws governing their relationship, which we have seen to be the counterfactual laws of human action.

In conclusion of this section, it might be useful to deal briefly with the question in how far counterfactual analysis can give a realist account of *a priori causal* relationships. In short, the answer is that it can give us causal explanations of observable events, but that these causal explanations are of a different type than the ones current in other sciences.

In physics and other natural sciences, causal laws are laws relating phenomena in time. Causality in such fields is the "necessary consequence" of two phenomena, that is, the fact that the second always follows the first. However, no such thing can be said of economic laws. A 10% increase of the money supply might be followed in one case by a 5% increase of a (arbitrarily constructed) price level, in another case by an 8% increase, in another situation by a 2% decrease, and so on. All we can say from the point of view of economic science is that, as a consequence of the higher money supply spreading through the economy, the money prices paid by the recipients of these additional quantities of money will be higher than they otherwise would have been.

In short, variations of the money supply do cause variations of the level of prices, but there is here no consequence of phenomena involved. Rather, the variation of the money supply is the cause of a counterfactual relationship between the money prices as they come to be observed on the market, and the prices that would have come into existence in the absence of the variation of the money supply.

The existence of such counterfactual causality might cause a headache for positivists, who in all fields of enquiry look out for the consequential laws that they know from some of the natural sciences.[36]

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[36]For the modern reductionist view on causality and how it came to replace the more encompassing classical theory, see Mario Bunge, *Causality and Modern Science* (New York: Dover, 1979); William Wallace, *Causality and Scientific Explanation* (Ann Arbor: University of Michigan Press, 1972); and Edwin A. Burtt, *The Metaphysical Foundations of Modern Science* (Garden City, N.Y.: Doubleday, 1954).

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But it nicely fits into the classical theory of causality—as expounded in the works of Aristotle, Aquinas, and the *Book of Causes*—which championed a much larger notion of what causality is, namely, in the words of Aquinas: "Those upon which others depend for their being or becoming are called causes."[37] Clearly, in our example, a variation of the money supply is that upon which the relationship between observed and counterfactual prices depends.

THE NECESSITY OF COUNTERFACTUAL ANALYSIS

There is no question that counterfactual laws exists and are universally valid. Some economists might fear, though, that we give away too much of the practical relevance of our science by claiming that some of its most important laws "merely" enable us to explain the factual in terms of the counterfactual. They should consider the following four points.

First, real-life decision-making is based on counterfactual comparisons. When an entrepreneur hires a worker, he compares the revenue that he expects to result from the activity of the new employee to the revenue that he expects to obtain from other investments of the salary. The important word here is "expect," since there is no way to *know* what a different decision would have brought about, because any decision *precludes* the realisation of all other alternatives. The entrepreneur must choose here and now, and this choice must be based on counterfactual comparisons.

Second, all other sciences take recourse to counterfactual comparisons, too. For example, causality in law is usually conceived as a *conditio sine qua non*, that is, as a condition without interference of which the events would have been different.[38] And even the natural sciences use counterfactual comparisons. For the performance of

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[37]St. Thomas Aquinas, *Commentary on Aristotle's Physics* (New Haven, Conn.: Yale University Press, 1963), book 1, lecture 1, nr. 5.

[38]I am indebted to Professor Lemennicier from the University of Paris-Assas for this point. On causality in German civil law, see A. Teichmann, "Erläuterung zu den §§249, 823," in *Bürgerliches Gesetzbuch*, ed. Othmar Jauernig, et al., 4th ed. (München: Beck, 1987), pp. 199ff., 909ff. For a different account of causality in the law, rejecting the *sine qua non* theory, see Adolf Reinach, "Über den Ursachenbegriff im geltenden Strafrecht," *Sämtliche Werke* (Munich: Philosophia, 1989), vol. 1, pp. 1ff. and in particular pp. 19f. Reinach's position can, however, be reconciled with our counterfactual approach.

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an experiment presupposes that, if the change had *not* been introduced, the observed effect would have remained constant. Of course, this assumption can never be proven on the basis of observations precisely because the introduction of the change makes the required observation impossible. Thus, the natural sciences here rely on the very same assumptions as economics—yet, whereas economics can do with these assumptions alone, the theoretical natural sciences must introduce additional assumptions and artifacts.

Third, there is no other way of conceiving of general laws of human action. I do not claim that the view here submitted is merely *one* view on economics; rather, I claim that it is the *only* one that leaves a scope for economic principles. *Either* economic laws refer to relationships between reality and the counterfactual, in which case they can be exact and apodictically true, *or* economic laws are supposed to describe reality in terms of other perceivable things, in which case there is no such thing as an exact science of human action. Unfortunately, economists have not recognised that the laws they discovered by their nature refer to counterfactual relationships, even though in countless instances they have qualified their formulations of economic laws by saying "than otherwise."[39]

Fourth, conceiving of economics as a science dealing with counterfactual comparisons does not reduce its practical relevance. The case is just the reverse. Precisely because economics analyses the comparative effects of choice, it is highly relevant for all policy issues. Consider the frequent proposal to reduce unemployment by government spending. Economists reject these measures because the government can only spend what it has previously taken away from other members of society. Thus, they might (counterfactually) argue: "Government

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[39]John R. Hicks perceived the counterfactual nature of equilibrium economics in his discussion of the role of "contemporaneous causality" in economics. For a discussion, see Hülsmann, "A Realist Approach to Equilibrium Economics," pp. 42f. However, contemporaneous causality is, for Hicks, merely one out of three different concepts of causality in economics, and even though he describes it as "the characteristic form of the causal relation in modern economics" and as a causal relation between "relevant alternatives," he fails to relate it to individual choice. See John R. Hicks, *Causality in Economics* (New York: Basic Books, 1979), pp. 62 and 27. On contemporaneous causality, and on sequential causality and permanent causality, see Hicks, *Causality in Economics*, pp. 73ff. and 12ff., respectively. With this distinction, Hicks seems to follow Mill, *System of Logic*, vol. 1, pp. 110ff.

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spending increases the incomes of some members of society above the level they would otherwise have reached. However, it necessarily also *reduces* the income of *other* persons below the level they would otherwise have reached. Government spending might, in some places, create more jobs than would otherwise have been created, but, on the very same grounds, it will necessarily destroy jobs in other places."

This way of stating the issue is entirely independent of time and place, yet is undisputedly relevant for any concrete choice because it compares the effects of the available alternatives. Thus, it refers to reality in a way that no other approach possibly could. It is applicable to decision-making about government policies under all conceivable circumstances. In short, it is a principle of real human life.

THE MYTH OF *GEDANKENEXPERIMENTE*

Among the most popular methodological views among Austrian economists is that economic reasoning discerns the laws of human action through *Gedankenexperimente* or mental experiments.[40] This view, however, is untenable, as we will now proceed to show.

We find a succinct statement of the method of mental experiments in the work of Mises, who says that change can only be analysed if we start our examination at a state of affairs without any change and then introduce a change of a datum in order to analyse the effects that have to be attributed to this change as its cause.

> There is no means of studying the complex phenomena of action other than first to abstract from change altogether, then to introduce an isolated factor provoking change, and ultimately to analyze its effects under the assumption that other things remain equal.[41]

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[40]The first description of the method of mental experiments was due, not surprisingly, to a physicist-philosopher. See Ernst Mach, "Über Gedankenexperimente," *Erkenntnis und Irrtum*, 5th ed. (1897; reprint, Darmstadt: Wissenschaftliche Buchgesellschaft, 1991), pp. 183–200. The first Austrian economists to endorse this method in economics were apparently Josef A. Schumpeter, *Wesen und Hauptinhalt der theoretischen Nationalökonomie* (Leipzig: Duncker & Humblodt, 1908), pp. 451ff.; and Friedrich von Wieser, "Das Wesen und der Hauptinhalt der theoretischen Nationalökonomie—kritische Glossen," *Gesammelte Abhandlungen* (Tübingen: Mohr, 1929), pp. 22f.

[41]Mises, *Human Action*, p. 248. See also, e.g., Frank Knight, *On the History and Method of Economics* (Chicago: University of Chicago Press, 1956), p. 175;

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The first point to be made is that this statement is wrong insofar as Mises contends that there is no other method for the analysis of change than this one. Indeed, we have seen above that, relying on the simple and realistic notion that all entities composing the world are finite, one can explain a change in terms of the counterfactual state of affairs that would have obtained in the absence of the change.

Thus, the remaining question is whether the method recommended by Mises could possibly be an alternative approach.

It is clear that *if* mental experiments were the economist's only tool of dynamic analysis, this would have uncomfortable implications indeed. Part of the frozen data are the valuations (that is, choices) of other human beings, and one cannot assume constancy in choice without running into various performative contradictions.[42] If economic laws were based on the assumption of unchanging conditions, it would not be clear at all how they could be used for the understanding of the real world. It would be impossible to take them at face value for immediate application, and this would considerably diminish their importance. Economic laws might then describe "tendencies" or "approximations" but they would not be exact statements about reality as it is here and now.

Most importantly, the method of mental experiments is not truly an alternative to the method of counterfactual comparisons because it is itself, like the experiments of the natural sciences, based on a counterfactual comparison. The underlying assumption in a laboratory experiment is that the observed effect *would not* have occurred in the absence of the observed cause. This is clearly a counterfactual assumption that is itself not based on observation. Similarly, the underlying assumption in mental experiments is that the operation of the law in question *could* be observed if only one condition of action

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Walter Eucken, *Grundlagen der Nationalökonomie*, 9th ed. (Berlin: Springer, 1989, p. 188); and Murray N. Rothbard, "Praxeology as the Method of the Social Sciences," in *Method, Money, and the Austrian School*, vol. 1 of *The Logic of Action* (London: Edward Elgar, 1997), p. 35. A good discussion of *ceteris paribus* is in Hausman, *Capital, Profits, and Prices*, pp. 123ff. On the history of the *ceteris-paribus* clause, see Joseph Persky, "Retrospectives: Ceteris Paribus," *Journal of Economic Perspectives* 4, no. 2 (Spring 1990), pp. 187–93, and Erich Kaufer, "Ceteris Paribus," *Journal of Economic Perspectives* 11, no. 2 (1997), pp. 190–91.

[42]See Hoppe, *Kritik der kausalwissenschaftlichen Sozialforschung*; Hoppe, *Praxeology and Economic Science*.

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varied while all other conditions remained frozen. Hence, mental experiments tacitly presuppose a counterfactual comparison, too. What distinguishes them from the counterfactual method that we presented is that they make the additional and, most importantly, unrealistic assumption of frozen data.

In the light of this fact, it is not difficult to decide which of the two methods is better. Both its realism and the principle of Occam's razor speak a clear language in favour of our elementary version of the counterfactual method. Still, it might be worthwhile to examine the question whether the method of mental experiments could at least in principle be used in economic science. Is it at least conceivable to perform mental experiments? In particular, is it possible to analyse some or all of the ramifications of a change "under the assumption that other things remain equal"? I contend that this is impossible in the sphere of human action.

What could one possibly understand by the "effects" of an event if not a modification of "other things"? And if there are secondary effects as a consequence of the primary effects, how could one, then, distinguish between the effects of these consequent changes and the effects of the original change? In particular, how could one identify a net effect of two effects operating in the opposite direction? It is not possible to perform such distinctions so long as human choice differs from the movements of stones and other dead matter.

Moreover, it is not clear as to how far the effects of the original change should be pursued. Mises seems to assume that, under stable conditions, all effects of the change will sooner or later be exhausted. Yet, nowhere does he give a reason why this should be so. Common sense suggests precisely the opposite assumption, namely, that whatever event occurs, its impact will make *all* of the future different from what it otherwise would have been. The impact might be so small as to be hardly sensible, but *if* there is any impact whatsoever, and *if* this impact makes all of the future different from what it otherwise would have been, then it is definitely impossible to follow through all the ramifications of the original change.

These considerations should suffice to show that the method of mental experiments could never be applied. And in the praxis of the economist, it has never been applied. I venture to give a challenge to all those who uphold the method of mental experiments, namely, to cite one single instance of the application of this method. In fact, neither Mises nor any other economist has ever attempted, still less succeeded,

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at doing so. What economists *have* done is to apply the method we have outlined above. They have based their reasoning on the rock-solid notion that human beings act in a world of finite entities, and they have compared the actual modification of the real world, as it results from choices and other events, with those modifications that could also have taken place.

The outstanding example is the quantity theory of money, which we will take to be the law that increases of the quantity of money lead to increases—though not necessarily always to *proportional* increases —of money prices. How can this law be established by mental experiments? No economist has ever traced the repercussions of an additional quantity of money through the whole economic system and through all future times. Most economists follow David Hume in contrasting two states of the economy, states which only differ by the quantity of money in use and by the price level, and then they say that it is the increase of the quantity of money that also increases the price level. However, this is clearly a case of *petitio principii*. Mises, by contrast, chose the correct method.[43] He stated that there must be some persons who first obtained the additional quantity of money. As a consequence of their increased money balances, the marginal utility of money for these persons diminishes, and therefore they spend more money than they otherwise would have spent. In turn, this spending increases the money balances of other persons who, again, spend more money than they otherwise would have spent. Since the quantities of all other goods are not affected by the increase of the quantity of money, we have to conclude that the increased spending must, *ipso facto*, increase most of money prices paid on the market, and that only some isolated prices might decline.

To sum up, the valid core of the idea of performing mental experiments is that economic laws cannot be established by the observational methods of the natural sciences. But the question is whether experiments are necessary at all. The view that one must create "special conditions" to "isolate" the effects of a given event is confused over the rôle and the presuppositions of experiments. Even in the natural sciences, experiments can only be performed on the basis of the insight that the world is finite. It is from this insight alone that economists can directly derive the kind of propositions we have discussed

[43]See Ludwig von Mises, *Theory of Money and Credit*, trans. H.E. Baston (Indianapolis, Ind.: Liberty Classics, 1980), pp. 160ff.

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above. In the natural sciences this direct derivation is impossible, and therefore one takes recourse to the artifact of experiments. But why should economists bother about these handicaps of their fellow researchers and use their crutches? In so doing, they give the ridiculous impression of a healthy person wearing thick glasses that, so he believes, improve the force of his eyes whereas they distort the way he sees the world. The economist should rather be happy that he has to make *fewer* assumptions about the world than do his colleagues from the natural sciences and that, moreover, he can pursue his investigations on these assumptions alone and without the use of any artifacts.

PREDECESSORS

It is often asserted that economic science begins with Adam Smith, who discovered the invisible hand of the market. However, it would be more pertinent to argue that economic science, as a science, begins with Frédéric Bastiat, who stressed the counterfactual relationship between what is seen and what is not seen in human action. In fact, Bastiat was the first economist who grasped the nature of the laws of choice and who, in the light of his intuition, explained the logical nature of economic argument. In his great essay "What is Seen and What is Not Seen," Bastiat presented his insight as a tale about a broken window. It is worth quoting Bastiat at some length, as he explains how economic argument contrasts facts and their counterfactuals:

> Have you ever been witness to the fury of that solid citizen, James Goodfellow, when his incorrigible son has happened to break a pane of glass? If you have been present at this spectacle, certainly you must also have observed that the onlookers, even if there are as many as thirty of them, seem with one accord to offer the unfortunate owner the self-same consolation: "It's an ill wind that blows nobody some good. Such accidents keep industry going. Everybody has to make a living. What would become of the glazier if nobody broke a window?"
>
> Now, this formula of condolence contains a whole theory that it is a good idea for us to expose, *flagrante delicto*, in this very simple case, since it is exactly the same as that which, unfortunately, underlies most of our economic institutions.
>
> Suppose that it will cost six francs to repair the damage. If you mean that the accident gives six francs worth of encouragement to the aforesaid industry, I agree. I do not contest it any way; your reasoning is correct. The glazier will

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> come, do his job, receive six francs, congratulate himself, and bless in his heart the careless child. *That is what is seen.*
>
> But if, by way of deduction, you conclude, as happens only too often, that it is good to break windows, that it helps to circulate money, that it results in encouraging industry in general, I am obliged to cry out: That will never do! Your theory stops at *what is seen*. It does not take account of *what is not seen*.
>
> *It is not seen* that, since our citizen has spent six francs for one thing, he will not be able to spend them for another. *It is not seen* that if he had not had a windowpane to replace, he would have replaced, for example, his worn-out shoes or added another book to his library. In brief, he would have put his six francs to some use or other for which he will not now have them.[44]

Here is the nature of economic argument in a nutshell. Bastiat's nineteenth-century admirers have very perceptively noticed his net departure from the type of argument cherished by the British school of Smith and Ricardo. His biographer Fontenay observed that Bastiat in a way continued the research programme of the physiocrats.[45] The latter had seen human happiness as the object of economic science, which in turn was for them the science of natural law. By contrast, the British classical economists had reduced economics to a science of (visible) facts, and replaced human happiness by a materialistically-conceived "wealth." Bastiat's great achievement, according to Fontenay, was to integrate these two approaches into a "science of the facts from the point of view of natural law."

Unfortunately, this perspective on the nature of economic laws fell into oblivion. Bastiat was defamed as a political agitator and his scientific achievements were systematically diminished, especially from the side of British economists.[46] Economic science fell under the sway of British political economy, which, as far as its materialistic methodology is concerned, found its fulfilment in twentieth-century positivism. And, last but not least, Bastiat's insights about the essential

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[44]Frédéric Bastiat, "What is Seen and What is Not Seen," in *Selected Essays on Political Economy* (Princeton, N.J.: Van Nostrand, 1964), pp. 2f.

[45]See R. Fontenay, "Notice sur la vie et les écrits de Frédéric Bastiat," F. Bastiat, *Oeuvres completes*, 3rd ed. (Paris: Guillaumin, 1881), pp. ix–lii.

[46]See Joseph T. Salerno, "The Neglect of the French Liberal School in Anglo-American Economics: A Critique of Received Explanations," *Review of Austrian Economics* 2 (1988), pp. 113–56.

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relationships between the visible and invisible parts of human action were replaced by a distinction more congenial to the positivistic mindset, namely, by the distinction between the short run and the long run. The invisible consequences of an action were interpreted as its long-run and thus not *yet* visible consequences. And both short-run and long-run consequences were analysed by mental experiments.

In the twentieth century, Ludwig von Mises and his followers have been virtually alone in recognising the great practical importance of counterfactual reasoning.[47] This recognition is obvious from the very way Mises stated the problem of political economy, that is, of the science analysing the impact of government intervention on the market economy. Mises did not proceed in two steps, first developing an economic model of the unhampered market, which he then contrasted with another model that also included the government. Rather, he advocated an integrated, one-step analysis of the counterfactual impact of interventionism, describing interventionism in a way that stressed its counterfactual consequences:

> Intervention is a limited order by a social authority forcing the owners of the means of production and entrepreneurs to employ their means in a different way than they otherwise would.[48]

In his actual economic analysis, therefore, Mises accurately described counterfactual laws, and his economic writings feature plenty of instances of counterfactual argument, especially when he discussed government intervention in the market economy. For example, he refers to government fixing "price at a height different from what the market would have fixed if left alone" and to labour unions raising "wage rates above the height at which the unhampered market would determine them." Similarly, in analysing the impact of credit expansion, he states

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[47]An important exception is Knut Wicksell's distinction of the "natural interest rate" from the money-interest rate. The former is the rate that "would come to be determined by supply and demand if the real capital goods were lent out in natura, without the intermediation of money." Knut Wicksell, *Geldzins und Güterpreise* (Jena: Gustav Fischer, 1898), p. iii, my trans.; also p. 98.

[48]Ludwig von Mises, *A Critique of Interventionism* (New York: Arlington House, 1977), p. 20. The original German version reads: "Der Eingriff ist ein von einer gesellschaftlichen Gewalt ausgehender isolierter Befehl, der die Eigentümer der Produktionsmittel und die Unternehmer zwingt, die Produktionsmittel anders zu verwenden, als sie es sonst tun würden." See Mises, *Kritik des Interventionismus*, p. 6.

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that "the gross market rate continues to lag behind the height at which it would cover both originary interest plus the positive price premium."[49]

The nature of these laws did not, however, come to be reflected in Mises's methodological writings. The reason for this failure of Mises-the-methodologist to take full account of the work of Mises-the-economist was, as we have seen above, that in his methodological writings he still laboured under the remnants of positivism in his thought. Mises was (so to say) not enough of a Misesian in methodology.

The writings of Mises's followers, then, featured exactly the same combination of accurate counterfactual analysis and inaccurate methodological reflection.[50] For example, Murray Rothbard championed the notion that economists perform mental experiences and never even hinted at the existence of counterfactual laws in his methodological writings.[51] But Rothbard-the-economist brilliantly captured these laws in many passages of his works. Consider the following passage from his *Man, Economy, and State*, where he shows that the positivist approach of the economic mainstream is unsuitable to give an exact description of the counterfactual laws ruling the business cycle:

> Those who approach business cycles from a statistical point of view and try in that way to arrive at a theory are in hopeless error. Any historical-statistical fact is a complex resultant of many causal influences and cannot be used as a simple element with which to construct causal theory. The point is that credit expansion raises prices *beyond what they would have been in the free market* and thereby creates the business cycle. Similarly, credit expansion does

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[49]Mises, *Human Action*, pp. 757, 763, 549.

[50]Mainstream economists make some use of counterfactual considerations in their teaching, as a glance at the better textbooks reveals. As far as research is concerned, however, the prevailing positivist creed has effectively prevented any systematic analysis of counterfactual laws. Thus, John R. Hicks, in chap. 2 of *Capital and Growth* (Oxford: Oxford University Press, 1965), characterizes comparative statics as the method comparing "any basic process" and an "amended process." Similarly, for example, Lee E. Ohanian, in "The Macroeconomic Effects of War Finance in the United States: World War II and the Korean War," *American Economic Review* 87, no. 1 (1997), pp. 23–40, analyses the macroeconomic effects of war finance by comparing a "baseline artificial economy" with the actual data. This is as close as the mainstream gets to Austrian economics as far as counterfactual laws are concerned.

[51]See, e.g., Rothbard, "Praxeology as the Method of the Social Sciences."

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> not necessarily lower the interest rate below the rate *previously* recorded; it lowers the rate *below what it would have been in the free market* and thus creates distortion and malinvestment.[52]

Among contemporary writings, Hoppe's 1989 *Theory of Socialism and Capitalism* is another outstanding piece of *a priori* comparative economic analysis, but Hoppe, too, was unaware that the nub of his argument involved a counterfactual comparison.

Conclusion

We have argued that mainstream economists look for the laws of human action in all the wrong places. Imbued with positivistic prejudices on methodology, they seek to find regularities between the observable parts of human action (behaviour) and other observable events. But no regularities can be found in this sphere. Laws of human action exist only within human action. They are counterfactual and *a priori* laws relating observed behaviour to unobservable choice alternatives.

Bibliography

Aquinas, St. Thomas. *Commentary on Aristotle's Physics*. New Haven, Conn.: Yale University Press, 1963.

Ballvé, F. "On Methodology in Economics." In *On Freedom and Free Enterprise*, edited by Mary Sennholz. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1956.

Bastiat, Frédéric. "What is Seen and What is Not Seen." In *Selected Essays on Political Economy*. Princeton, N.J.: Van Nostrand, 1964.

Bauer, Adolf. *Die freie und unberechenbare Mensch—Kritik der Markt-, Meinungs-, und Motivforschung!*. Nuremberg: Glock and Lutz, 1961.

Bunge, Mario. *Causality and Modern Science*. New York: Dover, 1979.

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[52]Rothbard, *Man, Economy, and State*, p. 862, emphasis in the original. It so happens that I disagree with Rothbard on the relationship between credit expansion and the interest rate; see Guido Hülsmann, "Toward A General Theory of Error Cycles," *Quarterly Journal of Austrian Economics* 1, no. 4 (1998). The point is, however, that Rothbard clearly perceived that certain economic laws were counterfactual in nature, and that this counterfactual nature made it impossible to grasp them accurately through the usual positivist methods.

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ELECTRONIC REPRODUCTION PROHIBITED

Burtt, Edwin A. *The Metaphysical Foundations of Modern Science*. Garden City, N.Y.: Doubleday, 1954.

Cairnes, John Elliot. *The Character and Logical Method of Political Economy*. London: Macmillan, 1875.

Chihara, Charles S. *The Worlds of Possibility*. Oxford: Clarendon Press, 1998.

Chisholm, Roderick M. "The Contrary-to-Fact Conditional." *Mind* 55 (1946).

Dilthey, Wilhelm. *Einleitung in die Geisteswissenschaft*. Tübingen: Mohr, 1922.

Dray, W. *Laws and Explanation in History*. London: Oxford University Press, 1957.

Eucken, Walter. *Grundlagen der Nationalökonomie*. 9th ed. Berlin: Springer, 1989.

Flew, Antony. *Equality in Liberty and Justice*. New Brunswick, N.J.: Transaction Publishers, 2001.

———. *Thinking About Social Thinking*. 2nd ed. Amherst, N.Y.: Prometheus, 1995.

Fogel, R.W. *Railroads and American Economic Growth: Essays in Econometric History*. Baltimore: Johns Hopkins Press, 1964.

Fontenay, R. de. "Notice sur la vie et les écrits de Frédéric Bastiat." In F. Bastiat, *Oeuvres completes*. 3rd ed. Paris: Guillaumin, 1881.

Gardiner, P.L. *The Nature of Historical Explanation*. London: Oxford University Press, 1952.

Goodman, Nelson. "The Problem of Counterfactual Conditionals." *Journal of Philosophy* 44 (1947).

Hausman, Daniel M. *Capital, Profits, and Prices: An Essay in the Philosophy of Economics*. New York: Columbia University Press, 1981.

———. *Essays on Philosophy and Economic Methodology*. Cambridge: Cambridge University Press, 1992.

———. *The Inexact and Separate Science of Economics*. Cambridge: Cambridge University Press, 1992.

Hempel, Carl. *Aspects of Scientific Explanation and Other Essays in the Philosophy of Science*. New York: Free Press, 1965.

Hicks, John R. *Capital and Growth*. Oxford: Oxford University Press, 1965.

———. *Causality in Economics*. New York: Basic Books, 1979.

Hoppe, Hans-Hermann. *Democracy—The God That Failed*. New Brunswick, N.J.: Transaction Publishers, 2001.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. *Economics and Ethics of Private Property.* Boston: Kluwer, 1993.

———. *Kritik der kausalwissenschaftlichen Sozialforschung*. Opladen: Westdeutscher Verlag, 1982.

———. *Praxeology and Economic Science.* Auburn, Ala.: Ludwig von Mises Institute, 1995.

———. *Theory of Socialism and Capitalism*. Boston: Kluwer, 1989.

Hülsmann, Jörg Guido. "Economic Science and Neoclassicism." *Quarterly Journal of Austrian Economics* 2, no. 3 (1999).

———. Introduction to *Epistemological Problems of Economics* by Ludwig von Mises, 3rd ed. Auburn, Ala.: Ludwig von Mises Institute, 2003.

———. "Knowledge, Judgement, and the Use of Property." *Review of Austrian Economics* 10, no. 1 (1997).

———. "A Realist Approach to Equilibrium Economics." *Quarterly Journal of Austrian Economics* 3, no. 4 (2000).

———. "Toward A General Theory of Error Cycles." *Quarterly Journal of Austrian Economics* 1, no. 4 (1998).

Kaufer, Erich. "Ceteris Paribus." *Journal of Economic Perspectives* 11, no. 2 (1997).

Knight, Frank H. *On the History and Method of Economics*. Chicago: University of Chicago Press, 1956.

Lachmann, Ludwig. *Expectations and the Meaning of Institutions*. London: Routledge, 1994.

Largeault, Jean. *Introduction à la philosophie réaliste*. Paris, 1985.

Lewis, David K. *Counterfactuals*. Cambridge, Mass.: Harvard University Press, 1973.

Locke, John. *An Essay Concerning Human Understanding*. Amherst, N.Y.: Prometheus, 1995.

Lucas, R.E. "Econometric Policy Evaluation: A Critique." *Journal of Monetary Economics*, Supplementary Series 1 (1976).

Mach, Ernst. "Über Gedankenexperimente." *Erkenntnis und Irrtum*, 5th ed. 1897. Reprint, Darmstadt: Wissenschaftliche Buchgesellschaft, 1991.

Machovec, Frank. *Perfect Competition and the Transformation of Economics*. London: Routledge, 1995.

McCloskey, Donald N. "Counterfactuals." In *The New Palgrave Dictionary of Economics*, edited by J. Eatwell, M. Millgate, and P. Newman. London: Macmillan, 1987.

Menger, Carl. *Grundsätze der Volkswirtschaftslehre*. Vienna: Braumüller, 1871.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

———. *Untersuchungen zur Methode der Sozialwissenschaften und der politischen Oekonomie insbesondere*. Leipzig: Duncker & Humblodt, 1883.

Mill, John Stuart. *Essays on Some Unsettled Questions of Political Economy*. 2nd ed. London: Longmans, 1874.

———. *System of Logic*. 8th ed. London: Longmans, 1872.

Mises, Ludwig von. *A Critique of Interventionism*. New York: Arlington House, 1977.

———. *Epistemological Problems of Economics*. New York: New York University Press, 1981.

———. *Grundprobleme der Nationalökonomie*. Vienna: Springer, 1933.

———. *Human Action*. Scholar's edition. Auburn, Ala.: Ludwig von Mises Institute, 1998.

———. *Kritik des Interventionismus*. Jena: Fischer, 1929.

———. *Nationalökonomie*. Geneva: Union, 1940.

———. *Theorie des Geldes und der Umlaufsmittel*. 2nd ed. Munich: Duncker & Humblodt, 1924.

———. *Theory and History*. 3rd ed. Auburn, Ala.: Ludwig von Mises Institute, 1985.

———. *Theory of Money and Credit*, trans. H.E. Baston. Indianapolis, Ind.: Liberty Classics, 1980.

———. *The Ultimate Foundation of Economic Science*. Princeton, N.J.: Van Nostrand, 1962.

Morgenstern, Oskar. *Wirtschaftsprognose*. Vienna: Springer, 1928.

Ohanian, Lee E. "The Macroeconomic Effects of War Finance in the United States: World War II and the Korean War." *American Economic Review* 87, no. 1 (1997.).

Pareto, Vilfredo. *Manual of Political Economy*. New York: Kelley, 1971.

Parsons, Stephen D. "Mises, the A Priori, and the Foundations of Economics: A Qualified Defence." *Economics and Philosophy* 13 (1997).

Persky, Joseph. "Retrospectives: Ceteris Paribus." *Journal of Economic Perspectives* 4, no. 2 (Spring 1990).

Popper, Karl. "Die Zielsetzung der Erfahrungswissenschaft." In *Theorie und Realität—Ausgewählte Aufsätze zur Wissenschaftslehre der Sozialwissenschaften*, edited by H. Albert. Tübingen: Mohr, 1964.

———."Falsifizierbarket, zwei Bedeutungen von." In *Handlexikon zur Wissenschaftstheorie*, edited by H. Seiffert and G. Radnitzky. Ehrenwirt: München, 1989.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Radnitzky, Gerard. "Explikation." In *Handlexikon zur Wissenschaftstheorie*, edited by H. Seiffert and G. Radnitzky. Munich: Ehrenwirt, 1989.

Reicher, Nicholas. "The Ontology of the Possible." In *The Possible and the Actual : Readings in the Metaphysics of Modality*, edited by Michael J. Loux. Ithaca, N.Y.: Cornell University Press, 1979.

Reichenbach, Hans. *Laws, Modalities, and Counterfactuals*. Berkeley: University of California Press, 1976.

Reinach, Adolf. "Über den Ursachenbegriff im geltenden Strafrecht." In *Sämtliche Werke*. Vol. I. Edited by Karl Schuhmann and Barry Smith. Munich: Philosophia, 1989.

Rickert, Heinrich. *Science and History: A Critique of Positivist Epistemology*. Princeton, N.J.: Van Nostrand, 1962.

Rizzo, Mario. "The Tendency to Discover: What Does it Mean?" Paper presented at the J.M. Kaplan Workshop in Politics, Philosophy, and Economics at George Mason University, Fairfax, Va., 2000.

Rothbard, Murray N. *Man, Economy, and State*. 3rd ed. Auburn, Ala.: Ludwig von Mises Institute, 1993.

———. *Power and Market*. 2nd ed. Kansas City: Sheed Andrews & McMeel, 1977.

———. "Praxeology as the Method of the Social Sciences." In *Money, Method, and the Austrian School*. Vol. 1 of *The Logic of Action*. London: Edward Elgar, 1997.

Salerno, Joseph T. "The Neglect of the French Liberal School in Anglo-American Economics: A Critique of Received Explanations." *Review of Austrian Economics* 2 (1988).

Schumpeter, Josef A. *Wesen und Hauptinhalt der theoretischen Nationalökonomie*. Leipzig: Duncker & Humblodt, 1908.

Shackle, G.L.S. *Epistemics and Economics: A Critique of Economic Doctrines*. Cambridge: Cambridge University Press, 1972.

Smith, Barry. "An Essay on Material Necessity." *Canadian Journal of Philosophy*, supp. vol. 18 (1991).

———. "Realist Phenomenology." In *Encyclopedia of Phenomenology*, edited by L. Embree. Boston: Kluwer, 1997.

Stalnaker, Robert. "Knowledge, Belief, and Counterfactual Reasoning in Games." *Economics and Philosophy* 12 (1996).

Sutton, John. *Marshall's Tendencies: What Can Economists Know?* Cambridge, Mass.: Massachusetts Institute of Technology, 2000.

Teichmann, A. "Erläuterung zu den §§249, 823." In *Bürgerliches Gesetzbuch*, 4th ed. Edited by Othmar Jauernig, et al. Munich: Beck, 1987.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Thornton, William. *Miscellaneous Works*, edited by Ph. Mirowski and S. Tradewell. Vol. 1 of *The Economic Writings of William Thornton*. London: Pickering & Chatto, 1999.

Vaihinger, Hans. *The Philosophy of "As If"—A System of the Theoretical, Practical, and Religious Ficitons of Mankind*. 2nd ed. London: Routledge & Kegan Paul, 1935.

Wallace, William A. *Causality and Scientific Explanation*. Ann Arbor: University of Michigan Press, 1972.

Weber, Max. *Gesammelte Aufsätze zur Wissenschaftslehre*. Tübingen: UTB, 1988.

Whately, Richard. *Elements of Logic*. New York: Harper, 1856.

———. *Introductory Lectures on Political Economy*. 3rd ed. London: Parker, 1847.

Wicksell, Knut. *Geldzins und Güterpreise*. Jena: Gustav Fischer, 1898.

Wieser, Friedrich von. "Das Wesen und der Hauptinhalt der theoretischen Nationalökonomie—kritische Glossen." In *Gesammelte Abhandlungen*, edited by F.A. Hayek. Tübingen: Mohr, 1929.

Woods, Michael. *Conditionals*. Oxford: Clarendon Press, 1997.

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BOOK REVIEWS

Edited by Stephan Kinsella*

JAMES L. NOLAN, JR. *REINVENTING JUSTICE: THE AMERICAN DRUG COURT MOVEMENT.* PRINCETON, N.J.: PRINCETON UNIVERSITY PRESS, 2001. PP. 264.

The first court-directed drug treatment program, or drug court, was created in Dade County, Florida, in 1989 as an experimental diversionary alternative to criminal sanctions. Within a dozen years, the model had been adopted, with various modifications, in approximately 800 jurisdictions. The book's stated purpose is to understand this drug court

> movement against the backdrop of the history of the social control of drugs in the United States and to understand the consequences of this judicial innovation on the process of criminal adjudication and on social and legal understandings of justice. (p. 13)

Indeed, the rapid spread of drug courts is quite remarkable,[1] stimulating a number of interesting questions. Beyond asking why this new approach to drug policy has been widely implemented as quickly as it

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[1]Rapid diffusion of a new court-based institution is certainly not unprecedented in American criminal justice history. Consider the spread of juvenile courts, which started in Chicago in 1899, and were found in all but three states by 1920, subsequently disappearing in the 1970s and 1980s. See Nolan, *Reinventing Justice*, pp. 171–76.

Nolan goes to great length trying to suggest that while drug courts are similar to these juvenile courts, they still are fundamentally new and different. In fact, however, it appears that there are policy cycles or institutional cycles, rather than the smooth, continuous policy evolutions that Nolan sets up as a straw man. Thus, the link is probably stronger than Nolan prefers to admit.

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has, for instance, we might ask if drug courts effectively achieve their objectives, if those objectives are appropriate, and what impacts and implications are likely to follow from this development? Nolan answers some of these questions, although often unsatisfactorily, while intentionally ignoring others.

AN OVERVIEW OF THE BOOK

Consider Nolan's explanation for government policies toward drug markets and drug consumption in general, from Chapter 2. His discussion focuses on "different systems of moral understanding" which he suggests have "informed social responses to drug use in varying ways over time"(p. 14). He considers the religious tenets against drug use, what he calls the "therapeutic paradigm," and the utilitarian orientation of Americans. However, Nolan's story of competing moralities driving the evolution of drug policy misses the mark. An examination of competing interests does a much better job explaining historical developments in drug policy.[2] While some advocates of drug policy hold strong "moral" beliefs that are used to "justify" the policy they advocate, it does not follow that these moral beliefs of the time are the key factors that explain the policies which do evolve. For one thing, what people believe to be "moral" often is a rationalization of self-interested behavior that reduces decision-making and psychic costs, and moral rhetoric becomes the common political language even though the underlying reasons for policy are the interests of politically powerful individuals and groups.[3]

Nolan turns to the evolution of drug courts themselves in Chapter 3, contending that they can be seen as part of a general movement toward treatment as a replacement for punishment; for instance, he cites the earlier "Treatment Alternatives to Street Crime" (TASC) programs that started in 1972 (p. 44). Those directly involved with the programs think drug courts are great because they believe that they are actually accomplishing good things, such as ending drug use and reducing recidivism rates (a claimed result that is now being questioned). Some

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[2]See, for instance, Mark Thornton, *The Economics of Prohibition* (Salt Lake City: University of Utah Press, 1991); and David W. Rasmussen and Bruce L. Benson, *The Economic Anatomy of a Drug War: Criminal Justice in the Commons* (Lanham, Md.: Rowman and Littlefield, 1994).

[3]Bruce L. Benson, "Endogenous Morality," (paper presented at the Austrian Scholars Conference, Auburn, Ala., March 2002).

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stress that these courts are also punitive: "a therapeutic sensibility can actually translate into very tough, harsh, intrusive forms of legal social control" because the judge can invoke the coercive powers of the criminal justice system to "encourage" acceptance of treatment. In other words, Nolan sees the drug courts in the same light as he sees drug policy itself, as being legitimized from various moral perspectives including retribution, utilitarian objectives (e.g., deterrence, rehabilitation), and therapy.

However, I see it from the interest-group perspective, where the key interest groups include judges (who readily admit that they get much more utility from their work in drug courts than from the trials and sentencing processes that they are generally involved in) and those who want to keep drug policy in the criminal justice system rather than, say, in public health (e.g., non-coerced treatment) or education, or in the hands of private individuals. Note in this context that, while Shakespeare may be correct in suggesting that "all the world is a stage," the "dramaturgical model for interpreting social life" that is adopted in Chapter 3 (on "Therapeutic Theater") really adds very little to our understanding of drug courts (or most anything else). Most of what is important in this chapter could be explained by considering the incentive and constraints facing the "actors" in the process, including the transactions costs associated with monitoring and measuring bureaucratic activities.[4]

Nolan explains, in Chapter 4, that the drug court movement actually is an example of judicial activism that has come to dominate so many constitutional courts during the twentieth century, if not earlier. For those who believe that limited constitutional governments can be maintained, the popularity of drug courts among judges should be very disturbing. The common law tradition presumably is one of judicial restraint. Rather than legislating, judges are suppose to discover the relevant law by looking at precedent, at statutes, or at the constitution. Increasingly, however, judges are becoming legislators—un-elected and largely unconstrained by even the imperfect constraints facing legislators who must compete for election and reelection. And the drug court

[4]See, for example, Albert Breton and Ronald Wintrobe, *The Logic of Bureaucratic Control* (Cambridge: Cambridge University Press, 1982); and for an application of the Breton-Wintrobe analysis to drug policy analysis, see Bruce L. Benson, David W. Rasmussen, and David L. Sollars, "Police Bureaucrats, Their Incentives, and the War on Drugs," *Public Choice* 83 (April 1995), pp. 21–45.

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movement demonstrates that the increased activism that characterizes state and federal supreme and appellate judges—who have interpreted out of existence many of the constitutional constraints that used to be accepted—is spreading to the trial court level:

> Like the romantic Supreme Court judges, the drug court judges have jettisoned traditional adjudicative restraints, finding them "too confining, boring, unrewarding, [and] insufficiently responsive to social problems." (p. 94)

Drug court judges are simultaneously legislating, judging, and executing law within their jurisdictions. Nolan reports that one judge contended that it is "okay to be inconsistent," another indicated that "you just cannot have absolute rules," and another stressed that "As long as whatever you do is designed to get them off drugs and put them back out on the street in a position where they can fight using drugs, whatever you do to accomplish that is fine"; such views are widespread among drug court judges (p. 103).

Nolan does not raise such criticisms, although in the last page of the chapter, he does cite one individual who stated, "I find the notion that judges need excitement to be a very frightening one. . . . If the need for excitement is what drives changes such as these, what will they do next" (p. 110). What they are likely to do next is extend the drug court model to other crimes. Indeed, as Nolan explains in Chapter 6, this is already occurring.[5] Drug court advocates see drug crimes as "diseases" driven by "low self esteem," and while Nolan recognizes that this assumption is of "questionable validity" (p. 139), it is motivating an expanded scope for therapeutic approaches to crime, as many drug courts are now "treating" non-drug (e.g., property, violent) criminals as well, alleging that they are also driven by low self-esteem.

The reduced emphasis on "guilt" that comes with this approach also fits into a general trend that has developed in the United States, but which Nolan does not recognize. Criminals are seen by many who "study" crime as products of their environment with no control over their actions. This "excuse-making industry," to use Bidinotto's term, has had the effect of undermining individual responsibility and creating

[5]I shall not discuss chap. 5 on "Drug Court Storytelling," since it is more in line with chap. 3 than chap. 4, although chaps. 3 and 5 provide an interesting description of drug court process, if one does not get too turned off by the theater metaphor.

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an environment that fosters and even excuses crime,[6] as criminals cite such arguments to rationalize their behavior. Almost every criminal now claims to be a victim, free of blame for their actions. Advocates of "therapeutic justice" described in the last two chapters of Nolan's book appear to be part of Bidinotto's "industry."

In Chapter 7, Nolan discusses the concepts that have dominated the philosophical debate about justice (retribution, utilitarian objectives like rehabilitation and deterrence) and how these concepts appear to have interacted in the criminal justice system. Again, the emphasis on philosophy rather than interests may be misplaced, but in this case, that is less of a problem because his objective is to contrast the traditional concepts of justice with what he sees as an alternative paradigm: "therapeutic justice." Chapter 8 describes this paradigm. The contention is that treatment is "just" so criminal justice policies (indeed, laws in general) should be evaluated with regard to their therapeutic and anti-therapeutic qualities (p. 185). Therefore, when critics raise arguments based on other concepts of justice, the response is that the argument is "meaningless" because justice is about treatment, not retribution, deterrence, or whatever the critic sees as important (p. 208).[7]

A Libertarian Alternative

Drug courts keep the criminal justice system directly involved in drug policy. In fact, the approach provides a new justification for criminalization of drug sales and use. However, judges who have correctly recognized the system's massive failure and decided to develop drug courts could be advocating decriminalization or legalization in order to get the criminal justice system out of the drug control business. In fact, that is precisely what some judges have chosen to do.[8] This is the libertarian view, of course. Individuals should be free to do as they please, given that others are not harmed, even if their actions cause substantial harm to themselves.

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[6]Robert J. Bidinotto, ed., *Criminal Justice? The Legal System vs. Individual Responsibility* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1994).

[7]I must admit that I frequently scribbled "BS" in the margins of this chapter.

[8]See for example, James P. Gray, *Why Our Drug Laws Have Failed and What We Can Do about It: A Judicial Indictment of the War on Drugs* (Philadelphia: Temple University Press, 2001).

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Advocates of prohibition policies generally contend, from a utilitarian perspective, that harms are imposed on others. Such claims are examined elsewhere and most are rejected, but even though some spillover harms arise, prohibition policies are not warranted from a utilitarian perspective because their implementation imposes greater costs than those caused by drug consumption.[9] The abject failure of the drug war and alcohol prohibition before it should make such policies unattractive even to those who have adopted the "therapeutic perspective" and advocate saving drug consumers from themselves; there are alternatives, after all, such as privately produced information dissemination or treatment.

Police interest, not the "public interest," seems to be at the root of the drug war.[10] Thus, whether drug policy is examined from a utilitarian perspective of "efficiency" or from a libertarian perspective emphasizing individual freedom, a prohibitionist policy cannot be justified,[11] whether that policy involves punishment or therapy imposed through a drug court.

Conclusions: Should Justice be Therapeutic, Retributive, Utilitarian, or Restorative?

Nolan differentiates between "therapeutic justice," retributive justice, and various utilitarian objectives of criminal justice (e.g., deterrence, rehabilitation), essentially advocating the first. From a libertarian perspective, of course, individuals should not impose costs on victims, and when they do so, they should be held responsible: justice demands that action is taken to "reflect those negative consequences of harm and injury back onto the criminal."[12] Retributive justice suggests that when

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[9]See for example, Jeffrey A. Miron and Jeffrey Zweibel, "The Economic Case Against Drug Prohibition," *Journal of Economic Perspectives* 9 (Fall 1995), pp. 175–92; Thornton, *The Economics of Prohibition*; Rasmussen and Benson, *The Economic Anatomy of a Drug War*; and Steven Wisotsky, "A Society of Suspects: The War on Drugs and Civil Liberties," *Cato Policy Analysis*, no. 180 (Washington, D.C.: Cato Institute, 1992).

[10]Alfred Lindesmith, *The Addict and the Law* (New York: Vintage Press, 1965); Rasmussen and Benson, *The Economic Anatomy of a Drug War*, pp. 127–32; and Benson, Rasmussen, and Sollars, "Police Bureaucrats, Their Incentives, and the War on Drugs."

[11]Thornton, *The Economics of Prohibition*.

[12]Bidinotto, *Criminal Justice?* p. 194.

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an individual violates another individual's rights, the costs should be reflected back onto the criminal, but doing so through publicly-imposed punishment also "reflects negative consequences" onto taxpayers, and, more significantly, fails to reflect the negative consequences off the victim. In fact, victims suffer the costs of the crime itself along with additional costs that arise due to cooperation with police and prosecutors.[13] Thus, restitution should be a fundamental right as part of the "structure of liberty."[14]

Rothbard derived the right to restitution from the right to punish (i.e., retribution), which in turn derives from the right to self-defense, and he contends that the fundamental right of the victim is to exact proportional punishment, so restitution arises only if the victim is willing to accept payment in lieu of punishment.[15] Every restitution-based system that has existed probably evolved from a situation such as the one Rothbard envisioned. However, individuals also found that unilateral exactions of punishment were either very risky or impossible because of differences in the victim and offender's relative capacities for violence. Thus, reciprocal mutual support groups evolved to voluntarily assist members' pursuit of justice.[16] Under these circumstances, legal issues no longer involved just the victim and the offender, and since violent retribution can be quite costly to others in such groups, rules evolved which reordered the primacy of rights to punish and to receive restitution. By voluntary agreement, victims could not exact physical punishment unless and until the offender refused to pay fair restitution.[17]

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[13]For a discussion of such costs, see Benson, *To Serve and Protect*, pp. 50–72.

[14]Randy E. Barnett, *The Structure of Liberty: Justice and the Rule of Law* (Oxford: Clarendon Press, 1998), pp. 156–60.

[15]Murray N. Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), pp. 85–95.

[16]For primitive law examples, see Bruce L. Benson, *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Research Institute for Policy Studies, 1990), pp. 11–21. For a discussion of such developments in medieval England, see Benson, *Enterprise of Law*, pp. 21–30; and Benson, *To Serve and Protect*, pp. 198–205. Regarding medieval Iceland, see David Friedman, "Private Creation and Enforcement of Law: A Historical Case," *Journal of Legal Studies* 8 (March 1979), pp. 399–415. For medieval Ireland, see Joseph R. Peden, "Property Rights in Celtic Irish Law," *Journal of Libertarian Studies* 1 (1977), pp. 81–95.

[17]Benson, *To Serve and Protect*, p. 238.

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In a restitution-based system, crime (perhaps more appropriately called intentional tort) should involve only intentional, non-consensual acts entailing the initiation of force, fraud, or coercion against another person, since only those acts justify pursuit of restitution. Thus, criminal law would not be able to victimize individuals who voluntarily consume drugs while imposing no cost on others, even if the alleged purpose of the criminal justice system's efforts is to provide therapy to the "criminal."[18] Drug courts would not exist if the purpose of law was to restore victims rather than to punish people who commit acts that politically powerful groups dislike.

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[18]For rights-based justifications for restitution, see Rothbard, *Ethics of Liberty*, pp. 85–95; Barnett, *The Structure of Liberty*, pp. 156–60; and Benson, *To Serve and Protect*, pp. 227–59. Even if such justifications are rejected in favor of utilitarian objectives, a focus on restitution should not necessarily be rejected. On this, see Benson, *To Serve and Protect*, pp. 260–318. Liberty, justice, and efficiency (including deterrence and rehabilitation) are complementary objectives if they are pursued through establishment of victims' rights to restitution.

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